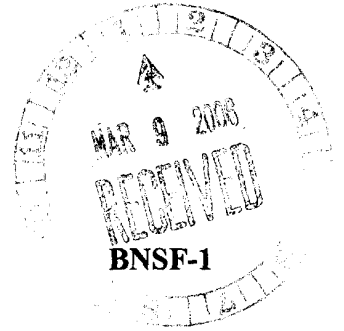


**BEFORE THE SURFACE TRANSPORTATION BOARD**



**In the Matter of:**

**STB [I.C.C.] Finance Docket No. 32549 (Sub No. 25)**

215967

**BURLINGTON NORTHERN, INC. – CONTROL AND MERGER – SANTA FE PAC.  
CORP. & ATCHISON, TOPEKA & SANTA FE RY. CO.**

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**BRIEF OF  
BNSF RAILWAY COMPANY  
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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RECEIVED  
Office of the General Counsel

March 9, 2006

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March 9, 2006

## INTRODUCTION

This case is about a labor implementing agreement between BNSF Railway Company (“BNSF”) and the Brotherhood of Locomotive Engineers and Trainmen (“BLET”). The agreement in question – known as Implementing Agreement 17A (“the Agreement”) – concerns the allocation of rail traffic (and related work) between certain lines of the former Burlington Northern Railroad (“BN”) and former Atchison Topeka & Santa Fe Railway (“ATSF”). This Agreement was imposed by an arbitration award under Section 4 of the New York Dock labor protective conditions, which apply to the BN-ATSF merger. See Burlington Northern Inc. – Control and Merger – Santa Fe Pac. Corp. & Atchison, Topeka & Santa Fe Ry. Co., 10 I.C.C.2d 661, 1995 WL 528184 (1995).

The specific contract language at issue is found in Article 4, Section 3 of Implementing Agreement (“Imp. Ag.”) 17A, which states that the Agreement “will become effective *upon 5 days’ written notice from the carrier*, after execution by the parties.” Imp. Ag. 17A (Ex. 7) at 4 (emphasis added). The purpose of this language was to give BNSF control over the timing of the Agreement’s implementation, thereby permitting the carrier to negotiate a parallel agreement with other train crew employees represented by the United Transportation Union (“UTU”). Without a parallel agreement for UTU-represented employees, wholesale implementation of Implementing Agreement 17A would cause operational chaos, requiring conflicting procedures for the trains on the affected lines. BNSF continues to negotiate with UTU, and thus has not yet given notice to put Implementing Agreement 17A into effect.

However, in response to what it perceived as an express request from BLET, the railroad did implement one particular provision of the Agreement – Article 3 – which relates solely to allocations of work among engineers. BNSF agreed to do so because the implementation of

Article 3 did not present the sort of operational problems that would be caused by a premature implementation of the rest of the Agreement.

The BLET is unhappy with this state of affairs and has brought a Petition seeking an order that would require BNSF to “comply fully” with Implementing Agreement 17A. BLET Pet. ¶ 22. It is not clear whether the union’s complaint is about the lack of full implementation of the Agreement, the partial implementation, or both. But regardless of the precise nature of the union’s demands, the Petition is defective and should be dismissed as a matter of law. This is so for at least three separate reasons.

First, a direct application to the Surface Transportation Board (“STB” or “Board”) is not appropriate here. Disputes over the interpretation or enforcement of implementing agreements under New York Dock should be referred to arbitration. Pursuant to Lace Curtain, the Board may choose to exercise appellate review over an arbitrator’s decision, but it generally does not decide this sort of dispute in the first instance. There is no reason to deviate from this well-settled and commonly accepted procedure here. This is, at bottom, a dispute about interpretation of the Agreement, and thus should be referred to arbitration.

Second, if the Board does accept original jurisdiction over this matter, it should rule as a matter of law that BNSF is not obligated to accede to the union’s demand for immediate implementation. The plain language of Article 4, Section 3 is clear and unambiguous: the timing of implementation is within the carrier’s control. Indeed, both of the BLET General Chairmen involved in the negotiation of Implementing Agreement 17A concede that the text of the Agreement permits BNSF to decide when to implement.

Finally, to the extent that the union’s complaint is about BNSF’s partial implementation of the Agreement, the issue is moot. The carrier put Article 3 into place because it understood

that was what the union wanted. To be sure, there is a factual dispute about whether the union did actually authorize a partial implementation. However, there is no need to resolve that fact dispute, because BNSF is perfectly willing to annul the partial implementation at any time. Thus, there is no actual controversy over this issue. If BLET does not want Article 3 to be implemented, the action may simply be rescinded. But BLET certainly is not entitled to bootstrap a partial implementation that it now says that it does not want into a premature implementation of other terms of the Agreement.

### **STATEMENT OF FACTS**

#### **A. The Background to Implementing Agreement 17A**

On August 23, 1995, the Interstate Commerce Commission ("ICC") approved the merger that created BNSF. Burlington Northern Inc. – Control and Merger – Santa Fe Pac. Corp. & Atchison, Topeka & Santa Fe Ry. Co., 10 I.C.C.2d 661, 1995 WL 528184 (1995). In doing so, the ICC imposed the conditions set forth in New York Dock Railway – Control – Brooklyn Eastern Terminal District, 360 I.C.C. 60, 1979 ICC LEXIS 91 (1979), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979) ("New York Dock"), on the transaction. 1995 WL 528184, at \*93. See also BLET Pet. ¶ 3; BNSF Reply ¶ 3.

Since the BN-ATSF merger, the railroad and the BLET have entered into numerous implementing agreements in response to notices served by BNSF pursuant to Section 4 of New York Dock to implement various aspects of the merger transaction. See BLET Pet. ¶ 5; BNSF Reply ¶ 5. One of these agreements was known as Implementing Agreement 17. This agreement arose from the carrier's need to divert rail traffic from the former BN's Tulsa-Madill-Ft. Worth corridor (sometimes referred to as the "Madill" line) to the former ATSF's Tulsa-Black Bear-Oklahoma City-Ft. Worth corridor (sometimes referred to as the "Red Rock" line).



See Imp. Ag. 17 (Ex. 1) at 1-2. The Madill line had various operational deficiencies as compared to the Red Rock line, and this agreement was designed to give BNSF greater flexibility to reroute trains to meet its operational needs. Implementing Agreement 17 also provided for various changes in operations and terminals necessitated by this diversion of traffic. Id. at 1-3.

Because this agreement affected traffic on both a former BN line and a former ATSF line, the carrier negotiated with two different BLET general committees representing employees on the two former railroads. The Santa Fe Committee bargained for employees who worked on the Red Rock (former ATSF) line, and the Frisco Committee (former BN) bargained for the employees who worked on the Madill line. The carrier was represented by labor relations officer Wendell Bell. See Dep. of Wendell Bell ("Bell Dep.") (Ex. 2) at 5, 7.

With respect to timing, Implementing Agreement 17 provided that it would become effective "upon 5 days' written notice from the carrier, after execution by the parties." Imp. Ag. 17 (Ex. 1) at 5. In early May, 2000, BNSF issued the requisite written notice to the BLET, and the new operations permitted by the agreement began soon thereafter. See Arbitration Award (Ex. 3) at 3.

It soon became apparent, however, that Implementing Agreement 17 was not solving some of the problems that it was intended to address. Id. Among other concerns, the agreement limited the kinds of work that former BN personnel could perform when handling trains on the former ATSF Red Rock line. It also prevented former Frisco crews from "following their work" by limiting the specific trains that these crews could handle. Id.; see also Bell Dep. (Ex. 2) at 9-10, 13.

## **B. The Negotiation and Arbitration of Implementing Agreement 17A**

In order to address these concerns, on May 2, 2003, BNSF served notice under Section 4 of the New York Dock conditions to amend Implementing Agreement 17. See Arbitration Award (Ex. 3) at 3. In the meetings over the railroad's notice, BNSF's representative, Wendell Bell, continued to negotiate with two different BLET general committees. In this round of negotiations, Rick Gibbons participated on behalf of the Frisco Committee (former BN), and Pat Williams participated on behalf of the Santa Fe Committee (former ATSF). Dep. of Richard C. Gibbons ("Gibbons Dep.") (Ex. 4) at 6; Dep. of Patrick J. Williams ("Williams Dep.") (Ex. 5) at 4. In addition, these two general chairmen were accompanied in the negotiations by BLET Vice President Steve Speagle. Williams Dep. (Ex. 5) at 21-24; Dep. of Steven D. Speagle ("Speagle Dep.") (Ex. 6) at 20-24.

These negotiations resulted in a tentative agreement. Bell Dep. (Ex. 2) at 15. However, the tentative agreement was not ratified by the engineers on the former ATSF line represented by Mr. Williams. Id. at 15-16; Williams Dep. (Ex. 5) at 12-13.

As a result, BNSF referred the matter to arbitration pursuant to Section 4 of the New York Dock conditions. Bell Dep. (Ex. 2) at 16. At that arbitration, BNSF argued that the arbitrator, Robert O'Brien, should impose the tentative agreement. Id. at 20. Mr. O'Brien did exactly that, in an award dated June 11, 2004. Arbitration Award (Ex. 3) at 6. He did not change the tentative agreement at all, but simply attached it to his award. Id. at 5; See Imp. Ag. 17A (Ex. 7). This became Implementing Agreement 17A.

## **C. The Content of Implementing Agreement 17A**

There are several different parts to the new Agreement. Articles 1 and 2 of Implementing Agreement 17A dealt with train operations, while Article 3 (and the side letters) dealt with pool

allocations. In particular, Article 1 of the Agreement is the provision that grants the carrier expanded flexibility to move trains over the Red Rock line instead of the Madill line, without regard to train-specific designations. Id. at 1. Article 2 eliminates the work restrictions for crews operating on these routes. Id. at 2. Article 3 provides for a specific allocation of work within the relevant pools, dividing turns between engineers of the former BN and engineers of the former ATSF. Id. at 2-3.

It is undisputed that the carrier's principal goal in Implementing Agreement 17A was to achieve the flexibility provided in Article 1 and the elimination of work restrictions provided in Article 2. Bell Dep. (Ex. 2) at 49; Speagle Dep. (Ex. 6) at 38. By contrast, the changes to the pool allocations provided in Article 3 were sought by Mr. Gibbons and his committee. Gibbons Dep. (Ex. 4) at 37; Speagle Dep. (Ex. 6) at 38.

For purposes of this case, the most important language of the Agreement is found in Article 4, Section 3. It replicates the language of the implementation section of Implementing Agreement 17, providing in full as follows:

"This agreement will become effective upon 5 days' written notice from the carrier, after execution by the parties. It may later be changed by mutual agreement or in accord with applicable law."

Imp. Ag. 17A (Ex. 7) at 4.

The intent of this provision was to give BNSF an opportunity to reach a parallel implementing agreement with the UTU, the union that represents conductors and trainmen on the affected territories. Bell Dep. (Ex. 2) at 32-35; Williams Dep. (Ex. 5) at 8-12; see also Gibbons Dep. (Ex. 4) at 8 (acknowledging that carrier needs time to make operational changes). Because it does not make sense to have different crew change points for members of the same train crew, BNSF has, as a matter of standard practice, always pursued parallel implementing agreements

with both BLET and UTU whenever it seeks to make operational changes. Bell Dep. (Ex. 2) at 25-26, 31-33; see also Williams Dep. (Ex. 5) at 8-9. Indeed, both of the BLET general chairmen admit they were aware, at the time that Implementing Agreement 17A was negotiated, that the railroad would need a parallel agreement from the UTU. Williams Dep. (Ex. 5) at 10-12; Gibbons Dep. (Ex. 4) at 17, 43.

#### **D. The Dispute Over Implementation**

Ever since the O'Brien award imposed Implementing Agreement 17A, BNSF has been engaged in efforts to secure a parallel agreement with the UTU. Bell Dep. (Ex. 2) at 33-34. BNSF has had a number of meetings with UTU to that end. Id. But because of various complications, including complex ongoing negotiations over a related interdivisional agreement – as well as foot-dragging by the union – BNSF and the UTU are still attempting to reach a parallel agreement. Id.; Williams Dep. (Ex. 5) at 9.

Notwithstanding the lack of a parallel agreement with UTU, Mr. Gibbons began demanding full implementation of Implementing Agreement 17A almost immediately after the O'Brien award was issued. On July 21, he sent an e-mail to Mr. Bell asking when the agreement would be implemented. E-mail of July 21, 2004 (Ex. 8). He followed up with a letter to Mr. Bell reprinting the July 21 e-mail and again asking when BNSF anticipated implementing the Agreement. Letter of Aug. 4, 2004 (Ex. 9). Mr. Bell repeatedly resisted Mr. Gibbons's entreaties, explaining that BNSF still required a parallel agreement with the UTU prior to implementation. Bell Dep. (Ex. 2) at 24-27; Gibbons Dep. (Ex. 4) at 42.

#### **E. The Partial Implementation**

In early August, sometime after Mr. Gibbons sent his letter demanding implementation of the Agreement, Mr. Bell and Mr. Gibbons spoke on the telephone about the issue. Bell Dep.

(Ex. 2) at 23-25; Gibbons Dep. (Ex. 4) at 33. Mr. Bell recalls that Mr. Gibbons continued to agitate for full implementation. Bell Dep. (Ex. 2) at 24-25. But Mr. Bell also recalls that Mr. Gibbons expressly asked him to implement at least the Article 3 allocations piece of Implementing Agreement 17A:

“At that point, he – my recollection is that Rick called me back and said, Well, at least you could do the allocations because the allocations are a seniority arrangement about who gets to bid for what jobs and are separate and apart from train operations. And initially I said, no, I am going to do the whole agreement all at once, once I get the UTU piece.”

Id. at 25. Mr. Gibbons’ recollection of this conversation is somewhat less clear, but he does agree that

“we discussed the fact that the allocations [under Article 3 of the Agreement] were not part of that operational aspect. And I don’t know the specific conversation obviously, but I think there was conversation as to moving forward with that allocation portion.”

Gibbons Dep. (Ex. 4) at 34; see also id. at 50 (conceding that he “discussed” the subject of partial implementation with Bell).

After this conversation with Mr. Gibbons, on or about August 12, 2004, Mr. Bell spoke by telephone with Mr. Speagle. Bell Dep. (Ex. 2) at 27; see also Speagle Dep. (Ex. 6) at 28 (stating that he does not remember the call specifically but that Mr. Bell “could be correct that I did call him”). However, there is a divergence in views as to what was said during that call. Mr. Bell recalls that Mr. Speagle

“ended up asking if I could put in the job allocation part of 17A, which I have to say carried more weight. He had been in the negotiations. He, as the vice president assigned to this, was representing BLET on both committees. And he is saying in effect, Come on, you can do the one part while at least implicitly recognizing that we did have a problem putting in the operational parts until I had a UTU agreement which, as he knew also I did not have.”

Bell Dep. (Ex. 2) at 27-28. Mr. Speagle says that he does not remember the call or the content of the call, but denies that he would have asked Mr. Bell to implement the Article 3 portion of Implementing Agreement 17A. Speagle Dep. (Ex. 6) at 28, 30.

In any event, it is undisputed that on August 12, 2004, Mr. Bell issued a notice under Article 4, Section 3 of the Agreement implementing Article 3 and the side letters, thereby installing the new pool allocations for traffic on the Red Rock line. Bell Dep. (Ex. 2) at 27-28. Letter of Aug. 12, 2004 (Ex. 10).

Both BLET general chairmen subsequently complained about the partial implementation. Initially, Mr. Gibbons did not object to the new allocations, and in fact cooperated with the carrier in effectuating the change. Gibbons Dep. (Ex. 4) at 57. However, he later sent a letter complaining that "the Carrier does not have the right nor the authority to parcel out portions of this Award imposed by the Arbitration Committee." Letter of Sept. 1, 2004 (Ex. 11). Likewise, Mr. Williams subsequently expressed dissatisfaction with the partial implementation, protesting that, "This crap of having just part of it implemented is not working." E-mail of Nov. 10, 2004 (Ex. 12).

Mr. Bell responded to the general chairmen's protests by e-mail on November 10, 2004, in which he said the following:

"As you know, my original idea was to leave the agreement on the shelf, by not serving the notice to make it effective unless and until I had a corresponding UTU agreement in hand. And, after making sure with operations that different crew change points for conductors and engineers was every bit as unfeasible as I thought, I resisted BLE's efforts to get me to put it into effect. Eventually, Rick and Steve convinced me that we could go forward with the allocations, while leaving the operational implementation until the UTU 17A was reached. I did that, and it now looks like no good deed goes unpunished."

Id. This response was sent to Messrs. Gibbons and Williams, and copied to Mr. Speagle, and none of the BLET officers ever responded or otherwise objected to Mr. Bell's characterization of events.

On several occasions since then, BNSF has expressed its willingness to rescind the partial implementation of Article 3 of Implementing Agreement 17A, but the BLET has declined to accept that offer. Indeed, it is not clear what the BLET wants at this point. Mr. Gibbons asserts that he wants full implementation of the Agreement. Gibbons Dep. (Ex. 4) at 60. But Mr. Williams simply wants the partial implementation rescinded. Williams Dep. (Ex. 5) at 19-20. He would prefer that Implementing Agreement 17A be scrapped entirely. Id. at 15.

## **ARGUMENT**

### **A. The Petition Should be Dismissed and Referred to Arbitration.**

As a threshold matter, the BLET's Petition is procedurally deficient. Styled as an action to "enforce" a labor arbitration award, the BLET invokes the Board's jurisdiction under 49 U.S.C. §§ 10501 and 11701 "because this dispute involves . . . employee protective conditions imposed . . . pursuant to 49 U.S.C. § 11347." BLET Pet. ¶ 4. The union asks the Board to "order BNSF to comply fully" with the arbitration award imposing Implementing Agreement 17A." Id. ¶ 22(a).

#### *1. The Board's Policy of Referring Disputes to Arbitration*

The Board has broad jurisdiction under 49 U.S.C. § 11326 (formerly § 11347) to decide questions relating to or arising from the New York Dock conditions. See, e.g., Norfolk & Western Ry. v. ATDA, 499 U.S. 117, 119-21 (1991). However, the New York Dock conditions contain an arbitral mechanism for the resolution of disputes "with respect to the interpretation, application or enforcement of any provision of" the conditions. New York Dock, 360 I.C.C. at

87, 1979 ICC LEXIS 91 at \*48 (Article I, Section 11). As the Board has repeatedly explained, disputes arising under the New York Dock conditions – including disputes about the interpretation or application of implementing agreements – should initially be referred to this arbitration process:

“Under New York Dock, changes affecting rail employees and related to approved transactions must be implemented by agreements negotiated before the changes occur. If the parties cannot reach agreement *or if they disagree on the interpretation of an implementing agreement*, the issues are resolved by arbitration, subject to appeal to the agency under our deferential Lacey standard of review.”

Burlington Northern Inc. – Control and Merger – Santa Fe Pac. Corp., STB Finance Docket No. 32549 (Sub-No. 23), 2002 STB LEXIS 562 (Sept. 23, 2002), at \*1-2 (emphasis added).<sup>1</sup>

Indeed, the Board routinely refers disputes to arbitration even in circumstances where one side might prefer to forego arbitration and have the Board decide the issue in the first instance. See, e.g., ATDA v. CSX Transp., Inc., 9 I.C.C.2d 1127, 1993 ICC LEXIS 230, at \*2 (1993), aff'd, ATDA v. ICC, 54 F.3d 842, 845-46 (D.C. Cir. 1995) (both the ICC and the court held that the Commission could require the parties to submit their dispute to arbitration); Kansas City Southern Indus., Inc. – Control – Gateway Western Ry. Co., STB Finance Docket No. 33311, 1997 STB LEXIS 305 (Nov. 19, 1997). This is not to say, of course, that the Board could not entertain arbitrable disputes if it wished to do so – just that it follows a strong and consistent policy of sending issues to arbitration first.

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<sup>1</sup> See also, e.g., Union Pac. Corp. – Control and Merger – Southern Pac. Rail Corp., STB Finance Docket No. 32760 (Sub-No. 37), 2000 STB LEXIS 464 (Aug. 11, 2000) (same); Rio Grande Indus., Inc. – Control – Southern Pac. Transp. Co., STB Finance Docket No. 32000 (Sub-No. 12), 2002 STB LEXIS 550, at \*2 (Sept. 17, 2002) (“If there is disagreement over application of . . . the New York Dock conditions, the dispute may be taken to arbitration pursuant to Article I, section 11 of the New York Dock conditions . . . , subject to appeal to the Board under our deferential Lacey standard of review.”); Illinois Central Corp. – Control – CCP Holdings, Inc., STB Finance Docket No. 32858, 1998 STB LEXIS 147, at \*7 (May 27, 1998) (“Deferral of such matters to the arbitration process provided by our labor conditions has been consistently approved by the courts. Thus, the law is clear that the matter must first be considered in arbitration.”) (citations omitted).



There are very good reasons for this policy. By referring matters to arbitration, the Board limits its involvement in labor disputes to an appellate oversight function, avoiding the need to resolve the innumerable mundane interpretation questions that inevitably arise under implementing agreements. In other words, “[i]t allows the [STB] to perform its intended function of regulating interstate commerce without the added burden of having to resolve arbitrable disputes.” Walsh v. United States, 723 F.2d 570, 575 (7th Cir. 1983). Moreover, this process of referral to arbitration is consistent with the “strong Federal policy which favors arbitration of labor disputes.” Id.

2. *This Dispute Involves an Arbitrable Question of Contract Interpretation.*

While the BLET asserts that this case presents an issue of “enforcement,” the dispute plainly turns on an issue of contract interpretation. Specifically, the question is whether BNSF has a unilateral right under Article 4, Section 3 of Implementing Agreement 17A to decide when to proceed with the changes described therein. If Article 4, Section 3 does in fact give BNSF the right to decide when implementation will take place, then there is obviously no merit to the BLET’s demand that the Agreement be “enforced.” In other words, any resolution of this case necessarily requires interpretation of the agreement, which is a classic arbitral function. Cf. Consolidated Rail Corp. v. RLEA, 491 U.S. 299, 303 (1989) (holding that all disputes over interpretation or application of agreements subject to the Railway Labor Act must be sent to arbitration).

But even if this were an issue of “enforcement,” it is still arbitrable. Section 11 of the New York Dock conditions provides that any disputes over “interpretation, application or enforcement” should be decided by an arbitrator. New York Dock, 360 I.C.C. at 87, 1979 ICC LEXIS 91 at \*48 (emphasis added). See also Fox Valley & Western Ltd. – Exemption

Acquisition and Operation – Certain Lines of Green Bay & Western R.R., 1993 ICC LEXIS 228, at \*4 (Nov. 4, 1993) (“The matters raised in [the] petition involve solely the interpretation, application, or enforcement (as to specified employees) of arbitration awards under New York Dock. Thus, they must be submitted for arbitration.”).

In these circumstances, the Board should decline to exercise its jurisdiction and should instead refer this matter to arbitration under Section 11 of New York Dock. If either side is aggrieved by the arbitrator’s decision, the Board can always choose to review the award under its Lace Curtain procedures.

**B. BNSF Has the Right to Decide When to Implement the Agreement.**

If the Board did depart from its usual policy of referring disputes to arbitration, it would need to determine, as an initial matter, whether BNSF does in fact have the right to control the timing of Implementing Agreement 17A. As we now show, the plain language of Article 4, Section 3, the negotiating history and context of the Agreement, and the testimony of the BLET’s own witnesses all support BNSF’s position on that issue.

*1. The Plain Language of the Agreement Supports BNSF.*

The purpose of contract interpretation is to discover and give effect to the mutual intent of the parties. See, e.g., Gresham v. Lumbermen’s Mut. Cas. Co., 404 F.3d 253, 260 (4th Cir. 2005). The intent of the parties is revealed, first and foremost, by the language of the contract. Id. If the language of the contract is “plain,” i.e. if its language conveys an unmistakable meaning, then that language will serve as the sole source of the parties’ intent. See, e.g., Am. Train Dispatchers Ass’n v. CSX Transp., Inc., 9 I.C.C.2d 1127, 1993 ICC LEXIS 230, at \*14 (1993) (contract language is sole source of evidence unless a provision is ambiguous or inconsistent with other provisions); Tex. & Pac. Ry. Co. Abandonment Between San Martine &

Rock House in Culberson County, Tex., 363 I.C.C. 666, 1980 ICC LEXIS 27, at \*26 (1980) (“Normally, we give great deference to the clear language of contracts”). Contract terms are considered “plain” if a reasonable person in the position of either party would have no expectations inconsistent with the contract language. See, e.g., Yoltan v. El Paso Tenn. Pipeline Co., 435 F.3d 571, 2006 U.S. App. LEXIS 1023, at \*55 (6th Cir. Jan. 17, 2006). Conversely, a contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings. See, e.g., Gleason v. Norwest Mortgage, Inc., 243 F.3d 130, 138-39 (3d Cir. 2001); Union Elec. Co. v. Consolidation Coal Co., 188 F.3d 998, 1002 (8th Cir. 1999).

It is also well-settled that this question of whether contract terms are plain or ambiguous may be decided as a matter of law. E.g., United Rentals, Inc. v. Keizer, 355 F.3d 399, 406 (6th Cir. 2004); Kassbaum v. Steppenwolf Prods., Inc., 236 F.3d 487, 491 (9th Cir. 2000). Thus, when the language of an agreement is plain, a contract interpretation dispute may be decided without the need for resolution of any related factual disputes.

In this case, the language of Implementing Agreement 17A is absolutely plain and unambiguous with respect to the timing of implementation. Article 4, Section 3 provides that the Agreement becomes effective upon “5 days’ written notice from the carrier.” Imp. Ag. 17A (Ex. 7) at 4. This means, of course, that the Agreement remains on hold until the carrier takes the predicate step of serving a notice. But more importantly, *when* the carrier serves the notice remains within its discretion – there is nothing anywhere in the Agreement that obligates the carrier to serve the notice at any particular time. Id. As such, Article 4, Section 3 effectively give BNSF total control over the timing of implementation. This means that, under the plain

language of the Agreement, BNSF is entitled to wait to implement the changes in the Agreement until it is ready to do so.

2. *The Context and Bargaining History of the Agreement Support BNSF.*

It makes perfect sense that the parties gave BNSF control over the timing of Implementing Agreement 17A. Everyone fully understood, at the time that the Agreement was negotiated, that the carrier still had to obtain a parallel implementing agreement with UTU. Gibbons Dep. (Ex. 4) at 43; Williams Dep. (Ex. 5) at 8-10; Speagle Dep. (Ex. 6) at 24-25. BNSF needed to have, as Mr. Bell put it, "the other side of the coin." Bell Dep. (Ex. 2) at 26-27. Without a parallel agreement, the crew change points would be different for engineers and conductors, requiring separate (if not extra) stops. See Bell Dep. (Ex. 2) at 24-26; Gibbons Dep. (Ex. 4) at 18, 24. The lack of a parallel agreement would also lead to conflicting procedures for train routing and performance of incidental work. Compare Imp. Ag. 17 (Ex. 1) at 1-3 with Imp. Ag. 17A (Ex. 7) at 1-2. When asked if BNSF could put Implementing Agreement 17A into effect without a parallel UTU agreement, Mr. Williams acknowledged that "I wouldn't think it would be very practical for the carrier, no." Williams Dep. (Ex. 5) at 12.

Accordingly, BNSF needed a means of controlling the timing of the BLET agreement in order to ensure that the two unions' agreements would be implemented in an orderly fashion. The provision in Article 4, Section 3 fulfills this reasonable purpose by deferring the BLET Agreement's effectiveness until the carrier serves its written notice.

This was hardly the first time that the parties used this sort of language to effectuate the simultaneous roll-out of parallel agreements with two separate crafts. Indeed, the sort of language found in Article 4, Section 3 is fairly common. See Williams Dep. (Ex. 5) at 8; Gibbons Dep. (Ex. 4) at 11-13. For example, Implementing Agreement 17, the predecessor to

Implementing Agreement 17A, contained the exact same provision. Imp. Ag. 17 (Ex. 1) at 5. The carrier did not serve the notice to implement that agreement until it had a parallel agreement with the other operating craft in hand.

Implementing Agreement 11 between BLET and BNSF also contained similar language. It provided that “[t]his agreement will become effective *upon notice from the carrier*, but not less than 10 days nor more than 1 year after it is executed by the parties, and may later be changed by mutual agreement or in accord with applicable law.” Imp. Ag. 11 (Ex. 13) at 4 (emphasis added). BNSF never gave the notice to put Implementing Agreement 11 into effect prior to the one year deadline, meaning that the agreement became a nullity. The BLET has recognized that the carrier was within its rights to withhold notice under Implementing Agreement 11 in this fashion. When asked why the carrier had not given notice to put Implementing Agreement 11 into effect, Mr. Williams stated, “Due to operational changes . . . *the carrier chose not to.*” Williams Dep. (Ex. 5) at 10 (emphasis added). In other words, BLET admits that the decision on implementation was within the carrier’s discretion.

In light of this past experience with implementation of similar agreements, everyone involved in the negotiation of Implementing Agreement 17A was aware – or at least should have been aware – of the meaning and purpose of Article 4, Section 3. The BLET certainly could have sought different implementing language that would have required implementation within a specific timeframe. It did not do so. In fact, the BLET admits that the issue of the timing of implementation was never even discussed. Gibbons Dep. (Ex. 4) at 7-8, 43; Williams Dep. (Ex. 5) at 6. The BLET simply accepted the language of Article 4, Section 3 without debate, thereby allowing BNSF to defer implementation until it is ready to proceed, just like every similar previous agreement.

3. *BLET Admits That Article 4, Section 3 Gives BNSF the Right to Control the Timing of Implementation.*

The plain language and the bargaining history of Implementing Agreement 17A are more than enough to sustain BNSF's position on the issue of whether it has any obligation to "fully implement" the Agreement. However, the final nail in the BLET's case on this point is the testimony of its two general chairmen, Mr. Williams and Mr. Gibbons. Both of these two individuals – the BLET's principal representatives during the bargaining over Implementing Agreement 17A – openly concede that the language of the Agreement allows the railroad to control the timing of implementation.

First, Mr. Williams is quite frank about the fact that Article 4, Section 3 gives the carrier unilateral control over implementation:

"Q: What's your understanding of what that language [Article 4, Section 3] means?

A: Is that, you know, when a carrier serves a five-day notice on me, that five days from today they are going to implement this agreement is what it means to me.

Q: Do you have any understanding about what it means with respect to when the carrier has to serve that notice?

A: *Whenever they get around to it, I guess."*

Williams Dep. (Ex. 5) at 6-7 (emphasis added). Mr. Williams also freely acknowledged that the reason that BNSF has not yet fully implemented the Agreement is because it has been unable to obtain a parallel agreement with the UTU, and that it would not be "practical" for the carrier to proceed in the absence of such a parallel agreement. *Id.* at 11-12.

Mr. Gibbons was initially somewhat more evasive about the meaning of Implementing Agreement 17A with respect to timing of implementation:

"Q: What is your understanding of what that [Article 4, Section 3] means?

- A: That BNSF would serve written notice to the involved parties that the agreement would be implemented or the award and agreement – and attached agreement would be implemented.
- Q: Is it your understanding that this language obligates BNSF to serve that notice at any particular time?
- A: Yes, that's my impression.
- Q: And at what time did you understand that BNSF would be obligated to serve the notice?
- A: That was unclear to me.
- Q: What's the source of your understanding that there was a particular time that the carrier was obligated to serve the notice?
- A: I understood by way of a BLET officer that there should be a 30-day clock involved, but I did no research. It was just in their conversation.
- Q: Did you talk about that 30-day clock in the bargaining of this agreement?
- A: No.
- Q: Did you talk to Mr. Bell about the 30-day clock outside the confines of the bargaining of this agreement?
- A: No, we didn't discuss the 30-day clock."

Gibbons Dep. (Ex. 4) at 7-8. But when pressed to identify what, exactly, in the Agreement obligates the carrier to serve a notice except on a schedule of its choosing, Mr. Gibbons came up empty:

- "Q: What is it in the agreement that you believe obligates the carrier to send that notice at any particular time? If there is nothing in the agreement, you can say that. I am asking you what you point to as the basis for that obligation.
- A: *I see nothing in the agreement that specifically says on what day they will serve that notice.*"

Id. at 16 (emphasis added). Moreover, Mr. Gibbons also admitted that he understood that BNSF has not given notice to put Implementing Agreement 17A into effect because it has not yet obtained a parallel agreement with UTU. Id. at 17.

This testimony by Messrs. Gibbons and Williams is fatal to BLET's case. Having admitted that the Agreement gives BNSF the right to control the timing of the notice under Article 4, Section 3, it is simply not possible to sustain the argument that the carrier is obliged to fully implement the Agreement just because the union demands it.

**C. The Dispute Regarding Partial Implementation Is Moot.**

The other aspect of the BLET's Petition is its complaint about the partial implementation of Article 3 (and the side letters) of the Agreement. In fact, at least for Mr. Williams, the partial implementation is the *only* issue. He does not care if Implementing Agreement 17A is ever fully implemented. Williams Dep. (Ex. 5) at 15. His only demand is that BNSF rescind the partial implementation of the Agreement. Id. at 19-20.

That is fine with BNSF. The carrier implemented the provisions of the Agreement relating to pool allocations because it believed – mistakenly or not – that the BLET wanted this done. Mr. Bell was under the impression that BLET had asked for partial implementation, pending completion of the ongoing negotiation with UTU.<sup>2</sup> Bell Dep. (Ex. 2) at 24-28. But if

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<sup>2</sup> Mr. Bell clearly recalls that Mr. Gibbons and Mr. Speagle specifically asked him to implement Article 3, even if the rest of the Agreement remained on hold. Bell Dep. (Ex. 2) at 24-28. Mr. Bell also provided the only documentary proof of that conversation, in the form of his e-mail in which he mentions that "Rick and Steve convinced me that we could go forward with the allocations, while leaving the operational implementation until the UTU 17A was reached." E-mail of Nov. 10, 2004 (Ex. 12). Mr. Speagle says he does not recall this conversation, but denies that he would have asked for partial implementation. Speagle Dep. (Ex. 6) at 28, 30. He cannot, however, explain Mr. Bell's e-mail. Id. at 31-33. And Mr. Gibbons has waffled on the facts, first admitting that Mr. Bell's e-mail was an accurate characterization of events, then retracting that admission, and then retracting the retraction. Gibbons (Ex. 4) at 62, 75, 77. But given BNSF's willingness to rescind partial implementation, there is really no need to resolve these questions about who-said-what.



the union does not in fact want implementation of the new pool allocations under Article 3, BNSF is happy to return to the previous arrangement.

However, to the extent that BLET is suggesting that the implementation of Article 3 somehow waives the carrier's rights under Article 4, Section 3 or mandates immediate implementation of the rest of the Agreement, it is clearly mistaken. That sort of argument is akin to a notion of equitable estoppel – the idea that even though BNSF is plainly permitted by the terms of the Agreement to defer implementation, it is now obligated by the equities of the situation to proceed with full implementation.

It is clear that the equities of the partial implementation story actually favor BNSF, not BLET. Everyone agrees that when BNSF put Article 3 into effect, it did so in an effort to do a “good deed,” *i.e.*, to accommodate what it perceived to be the BLET's desire for partial implementation. E-mail of Nov. 10, 2004 (Ex. 12); Bell Dep. (Ex. 2) at 50; Williams Dep. (Ex. 5) at 26; Gibbons Dep. (Ex. 4) at 50. Indeed, it is undisputed that BNSF did not particularly care about the new pool allocations – this was a change sought by Mr. Gibbons' committee. Bell Dep. (Ex. 2) at 9-10, 14-15, 49-50; Gibbons Dep. (Ex. 4) at 37; Speagle Dep. (Ex. 6) at 38. Thus, as Mr. Williams admits, the carrier received no benefit from putting Article 3 into effect prior to the rest of the Agreement. Williams Dep. (Ex. 5) at 26.

In these circumstances, there is no equitable reason to force BNSF to proceed with implementation of the Agreement, especially when doing so would cause serious operational problems. The carrier was trying to accommodate BLET, not gain some sort of advantage. It should not be punished for doing so. In fact, even Mr. Gibbons admits that the partial implementation does not give him a better argument for pressing BNSF into full implementation. Gibbons Dep. (Ex. 4) at 55-56.

Thus, if the BLET is adamant that it does not want Article 3 to remain in effect without the rest of Implementing Agreement 17A, the solution is to simply rescind the Article 3 pool allocations until such time as BNSF is prepared to put the entire Agreement into effect. Because BNSF does not object to that result, the issue is effectively moot.

### **CONCLUSION**

For these reasons, the Board should dismiss BLET's petition.

Respectfully submitted,



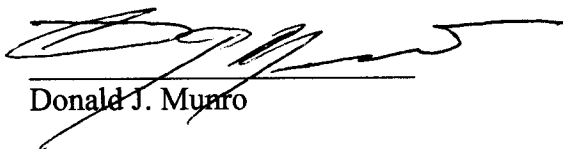
Donald J. Munro  
Jeffrey Skinner  
GOODWIN PROCTER LLP  
901 New York Ave., NW  
Washington, DC 20001  
(202) 346-4000

Date: March 9, 2006

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the attached Brief of BNSF Railway Company in Support of Motion for Summary Judgment was duly served upon counsel of record for the Brotherhood of Locomotive Engineers and Trainmen by hand delivery this 9th day of March, 2006, at the following address:

Michael S. Wolly, Esq.  
ZWERDLING, PAUL, KAHN & WOLLY  
1025 Connecticut Avenue, NW Suite 712  
Washington, DC 20036  
*Attorney for BLET*

  
Donald J. Munro

1

BNSF MERGER IMPLEMENTING AGREEMENT 17

between

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY CO.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

1. The purpose of this agreement is to provide for expedited changes in services and operations to effectuate the common control approved by the I. C. C. in Finance Docket No. 32549.

2. This agreement addresses a diversion of traffic from the former Frisco's Tulsa - Madill - Ft. Worth corridor to the former Frisco and Santa Fe's Tulsa - Black Bear - Oklahoma City - Ft. Worth corridor. It also addresses the changes in operations and terminals necessitated by this diversion.

IT IS AGREED:

Article 1 - Scope of this Agreement

Section 1

A. This agreement is strictly limited to freight trains moving between Tulsa and Oklahoma City and between Tulsa and the consolidated Ft. Worth terminal and grain trains which move from Tulsa to Galveston and Eagle Pass via the Ft. Worth consolidated terminal. These trains formerly moved between Tulsa and Oklahoma City via Sepulpa or between Tulsa and Ft. Worth via Madill.

B. No trains (except TUL-FTW as specified above) of any kind currently handled by the former Santa Fe employees in the various pools operating between Ft. Worth and Kansas City will be handled or operated by the pools established here.

C. Trading of trains (or swapping trains) between the former Santa Fe pools (or extra boards) and the former BN pools (or extra boards), while en route or at the initial terminal is prohibited.

Article 2 - Terminals, Train Operation Etc.

Section 1

Ft. Worth and Oklahoma City are established as the home terminals for the crews that are handling the trains covered by this agreement; Oklahoma City will be the away-from-home terminal for employees from Ft. Worth; Tulsa will be the away-from-home

terminal for employees from Oklahoma City.

## Section 2

A 1. At Ft. Worth, a pool will be established to handle all trains covered by this agreement operating between Ft. Worth and Oklahoma City. Engineers' positions in this pool will be allocated on the following basis:

|                      |                                    |
|----------------------|------------------------------------|
| Turn 1-6             | former BN (SLSF)                   |
| Turn 7               | former ATSF                        |
| Turn 8               | former BN (SLSF)                   |
| Turn 9-10 and higher | (Repeat sequence of turns 7 and 8) |

A 2. On the assignments in this pool allocated to the former BN (SLSF), allocations will be on a 50-50 basis between the employees on the Ft. Worth District and the employees on the former Sherman District with engineers' seniority on that district as of April 15, 1981. As attrition of these employees occurs, assignment in this pool allocated to former BN employees will be awarded in accordance with the employees' standing on the Ft. Worth District roster. If no such bids are received, bids from the former ATSF would be accepted; if none, the assignment will be force assigned in the usual manner from the Ft. Worth District roster.

A 3. On the assignments in this pool allocated to the former ATSF, the senior employee from the Cleburne, Gainesville and Arkansas City prior rights seniority districts will be awarded the position. If no such bids are received, bids from the former BN (SLSF) would be accepted; if none, the assignment will be force assigned in the usual manner from the Ft. Worth District roster.

B. At Oklahoma City, a pool will be established to handle all through freight trains operating between Oklahoma City and Tulsa. For its establishment, all positions in this pool will be re-advertised, and then awarded in accordance with the allocation set forth in this paragraph. Assignments in this pool will initially be allocated on a 50-50 basis between employees on the Tulsa District and Western District (subject to "prior rights" of former Oklahoma City District employees as defined in Memorandum of Agreement dated January 21, 1999) with seniority as engineer on the effective date of this agreement. As attrition of these employees occurs, assignments in this pool will be awarded based upon the employees' standing on the Western District roster (subject to "prior rights" of former Oklahoma City District employees as defined in Memorandum of Agreement dated January 21, 1999).

## Article 3 - Extra Service, Train Operation Etc.

### Section 1

A. The trains handled by the Oklahoma City pool may operate between the terminals of Tulsa and Oklahoma City via either the Sapulpa or the Black Bear route.

B. Mileages for these runs are as follows:

|  |     |
|--|-----|
| Ft. Worth - Oklahoma City              | 190 |
| Tulsa - Oklahoma City (via Sapulpa)    | 114 |
| Tulsa - Oklahoma City (via Black Bear) | 154 |

## Section 2

A. All temporary vacancies and extra service in the pool at Ft. Worth will be handled by the Ft. Worth District Engineers' Extra Board. Former Sherman District Engineers will have an allocation of one position on that Extra Board.

B. All temporary vacancies and extra service in the pool at Oklahoma City will be handled by the Oklahoma City District Engineers' Extra Board. Tulsa District engineers with a seniority date as engineer as of the effective date of this agreement will have an allocation of one position on that Extra Board.

## Section 3.

A. Hours of Service relief on trains destined to Ft. Worth will be by yard crews when the train is within the limits permissible under national agreements. If no yard crew is readily available to perform this service, or if the train has died outside those limits, employees assigned to the Ft. Worth District Engineers' Extra Board will be used.

B. Hours of Service relief on trains destined to Tulsa will be by yard crews when the train is within the limits permissible under national agreements. If no yard crew is readily available to perform this service, or if the train has died at or east of Morrison, the Tulsa Engineers' Extra Board will be used; if the train has not reached Morrison, an Oklahoma City Tulsa pool engineer will be used.

C. Hours of Service relief on trains destined to Oklahoma City from Ft. Worth will be by yard crews when the train is within the limits permissible under national agreements. If no yard crew is readily available to perform this service, or if the train has died outside those limits, it will be permissible to use the first-out Ft. Worth crew at Oklahoma City to perform the hours of service relief. Upon arrival at Oklahoma City, the relieving crew will be immediately deadheaded home. Otherwise, first, a pool or second, an extra board crew from the home terminal would be used to provide the necessary relief.

D. Hours of Service relief on trains destined to Oklahoma City from Tulsa will be by yard crews when the train is within the limits permissible under national agreements. If no yard crew is readily available to perform this service, or if the train has died outside those limits, the Oklahoma District Engineers' Extra Board will be used.

## Article 4 - Other Matters

### Section 1

The Company will attempt to give "prior rights" Sherman district employees (who do not move their residences from Sherman/Madill to Ft. Worth and who are assigned at Ft. Worth) a 3-hour advance call when they are being called to go on duty at Ft. Worth. The Company will attempt to give "prior rights" Tulsa district employees (who do not move their residences from Tulsa to Oklahoma City and who are assigned at Oklahoma City) a 3-hour advance call when they are being called to go on duty at Oklahoma City. It is recognized that this may not be practical or possible in all cases, but a good-faith effort will be made. However, penalties will be governed by a two-hour standard.

## Section 2

A. For a one year period after initiation of operations, Tulsa District engineers who are successful bidders for Tulsa-allocated positions at Oklahoma City, as well as any former Sherman District engineers who are successful bidders for Sherman-allocated positions at Ft. Worth, and who make an actual *bona fide* change in residence will receive all the benefits of the BLE Moving Benefits Package, signed on February 19, 1996.

Payments will not be made during the first 60 days after the initiation of operations. Employees who occupy permanent positions at Ft. Worth and Oklahoma City on the 60th day can request moving benefits under the BNSF/BLE Moving Benefits agreement. It is understood that the carrier will determine the number of moving benefit packages available, but in any event moving packages will only be payable to employees who do not presently work at Ft. Worth or Oklahoma City and who make bona fide moves to Ft. Worth, or Oklahoma City and such packages will not be offered after 1 year.

B. Beginning on the date assigned and continuing for 2 years thereafter, any employee who is assigned to one of the new positions and has received the BLE Moving Benefits Package cannot be displaced by a senior employee, unless the senior employee is unable to hold an assignment on his/her home seniority district. (This does not preclude normal seniority exercise and choice of assignments among employees in the newly established pools.)

C. Any employees who are awarded, or force assigned to these newly-established positions and who elect to receive the benefits of the BLE Moving Benefits Package will have a right of return to their former location by virtue of exercising their pre-existing seniority rights only upon the expiration of a two year period running from the date they took the new assignment. Any other employees who are awarded, or force assigned to these newly-established positions will have a right of return to their former location by virtue of exercising their pre-existing seniority rights.

D. The transfer allowances and lump sum allowances set forth in the BLE Merger Moving Benefits package will be available only after the employee has made and completed a bona fide change in residence.

E. Engineers who do not live in the Ft. Worth area on the date of this agreement who take permanent assignments in Ft. Worth and who do not accept a lump sum allowance in lieu of moving or any moving benefits and elect to waive any entitlement to such benefits will receive a driving allowance when they drive a personal vehicle to Ft. Worth to work. However, if a engineer elects to move after receiving the driving allowance, the amount of the driving allowance received by the engineer will be used to offset any monies paid by the company for the move. The company will pay the IRS authorized mileage allowance to such engineers until six years after the date of this agreement.

## Section 3

A. Section 14 of the Ft. Worth - Madill ID Agreement of March 27, 1981 will apply to the pre-November 1, 1985 employees who work on the runs established here.

B. Section 15 of the Ft. Worth - Madill ID Agreement of March 27, 1981 will apply to the pre-November 1, 1985 employees who work on the runs established here.



C. The Frisco extra board guarantee will apply to both of the pools established here for the first six months after this run is established. The parties also understand and agree that this guarantee may be extended beyond that time, particularly if there is excessive deadheading between Oklahoma City and Tulsa.

D. If this agreement ratifies, the four (4) engineers in the Oklahoma City - Tulsa pool on January 7, 2000 will be automatically certified as displaced/dismissed employees within the meaning of Section 5 and 6 of the New York Dock Conditions.

## Article 5 - General

### Section 1.

A. The parties have negotiated this Agreement mindful of the fact that their futures are linked and that we must work together to succeed over the long term. Therefore, the parties mutually pledge and commit themselves to act reasonably in the application of this agreement.

B. The parties will meet within 90 days of the implementation of this Agreement to review its operation.

### Section 2

A. All pre-existing agreements that conflict with the terms of this agreement are superseded to the extent of the conflict. All preexisting agreements that do not conflict with the terms of this agreement remain in full force and effect.

B. This implementing agreement is made pursuant to the New York Dock (360 I. C. C. 60, 84-90) which, by this reference, are incorporated here.

C. Except as specifically provided, nothing in this implementing agreement shall be interpreted to expand or contract protective benefits provided in the New York Dock Conditions imposed by the Interstate Commerce Commission and incorporated here by paragraph B of this section.

### Section 3

This agreement will become effective upon 5 days' written notice from the carrier, after execution by the parties. It may later be changed by mutual agreement or in accord with applicable law.

Signed and accepted at FT Worth TX this 10th day of MARCH, 2000

for BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS

for THE BURLINGTON NORTHERN  
AND SANTA FE RAILWAY CO.

TE Murphy

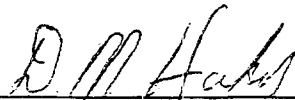
Pendell Sell

General Chairman

General Director - Labor Relations

  
General Chairman

Approved:

  
Vice President

2

Page 1

1                   BEFORE THE SURFACE TRANSPORTATION BOARD

2

3 - - - - - X

4 In the Matter of: :

5 STB [I.C.C.] Finance Docket No. 32549 :

6 :

7 BURLINGTON NORTHERN, INC. - CONTROL AND :

8 MERGER - SANTA FE PAC. CORP. & ATCHISON,:

9 TOPEKA & SANTA FE RY. CO. :

10 - - - - - x

11 Washington, D.C.

12 Wednesday, January 18, 2006

13

Deposition of WENDELL BELL, called for examination by counsel for the Brotherhood of Locomotive Engineers and Trainmen in the above-entitled matter, pursuant to notice, the witness being duly sworn by CARLA L. ANDREWS, a Notary Public in and for the District of Columbia taken at the offices of Goodwin, Procter, LLP, 901 New York Avenue, N.W., Washington, D.C. 20001, at 9:35 a.m., Wednesday, January 18, 2006, and the proceedings being taken down by Stenotype by CARLA L. ANDREWS and transcribed under her direction.

25

| Page 2  | Page 4  |
|---|---|
| <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the BNSF Railway Company:</p> <p>4 DONALD J. MUNRO, ESQ.</p> <p>5 Goodwin, Procter, LLP</p> <p>6 901 New York Avenue, N.W.</p> <p>7 Washington, D.C. 20001</p> <p>8 (202) 346-4000</p> <p>9</p> <p>10 On behalf of the Brotherhood of Locomotive Engineers</p> <p>11 and Trainmen:</p> <p>12 MICHAEL S. WOLLY, ESQ.</p> <p>13 Zwerdling, Paul, Kahn &amp; Wolly, P.C.</p> <p>14 1025 Connecticut Avenue, N.W.</p> <p>15 Suite 712</p> <p>16 Washington, D.C. 20036-5420</p> <p>17 (202) 857-5000</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 PATRICK J. WILLIAMS</p> <p>21 RICHARD C. GIBBONS</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  | <p>1 P-R-O-C-E-E-D-I-N-G-S</p> <p>2 Thereupon,</p> <p>3 WENDELL BELL</p> <p>4 was called as a witness and, after being duly sworn by</p> <p>5 the notary, was examined and testified as follows:</p> <p>6 EXAMINATION BY COUNSEL FOR THE BROTHERHOOD</p> <p>7 OF LOCOMOTIVE ENGINEERS AND TRAINMEN</p> <p>8 BY MR. WOLLY:</p> <p>9 Q Good morning, Mr. Bell.</p> <p>10 A Good morning.</p> <p>11 Q Would you give us your full name and title</p> <p>12 with the company?</p> <p>13 A Wendell Bell. I am general director of Labor</p> <p>14 Relations.</p> <p>15 Q How long have you worked for the company?</p> <p>16 A Since 1968.</p> <p>17 Q And the company is?</p> <p>18 A Now BNSF Railway.</p> <p>19 Q And it was formerly?</p> <p>20 A Burlington Northern Santa Fe -- Burlington</p> <p>21 Northern and Santa Fe Railway Company.</p> <p>22 Q Nothing in the change of the name of the</p> <p>23 company has had any impact on the events that gave rise</p> <p>24 to this case?</p> <p>25 A None.</p>   |
| Page 3  | Page 5  |
| <p>1 C-O-N-T-E-N-T-S</p> <p>2 WITNESS EXAMINATION BY COUNSEL FOR</p> <p>3 WENDELL BELL FOR THE BROTHERHOOD OF</p> <p>4 LOCOMOTIVE ENGINEERS AND TRAINMEN</p> <p>5 By Mr. Wolly 4, 51, 56</p> <p>6</p> <p>7 EXAMINATION BY COUNSEL</p> <p>8 FOR BNSF RAILWAY COMPANY</p> <p>9 By Mr. Munro 49, 55</p> <p>10</p> <p>11 E-X-H-I-B-I-T-S</p> <p>12 NO. IDENT.</p> <p>13 Exhibit No. 1..... 11</p> <p>14 Exhibit Nos. 2 through 4..... 22</p> <p>15 Exhibit No. 5..... 31</p> <p>16 Exhibit No. 6..... 35</p> <p>17 Exhibit No. 7..... 36</p> <p>18 Exhibit No. 8..... 38</p> <p>19 Exhibit No. 9..... 39</p> <p>20 Exhibit No. 10..... 47</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1 Q Have you had your deposition taken before?</p> <p>2 A Yes.</p> <p>3 Q So are you comfortable with the way in which</p> <p>4 depositions are taken or do you have any questions</p> <p>5 before we go?</p> <p>6 A No.</p> <p>7 Q Are you under any medication today?</p> <p>8 A No.</p> <p>9 Q You are generally familiar with the dispute</p> <p>10 that gave rise to this proceeding, aren't you?</p> <p>11 A Yes.</p> <p>12 Q Are you the individual for Burlington</p> <p>13 Northern who was involved in the negotiation and</p> <p>14 arbitration of Implementing Agreement 17A?</p> <p>15 A Yes.</p> <p>16 Q Were you also involved in the negotiation of</p> <p>17 Implementing Agreement 17?</p> <p>18 A I was the company representative in that as</p> <p>19 well.</p> <p>20 Q Inside the company to whom do you report?</p> <p>21 A John Fletz, vice president, Labor Relations.</p> <p>22 Q Is there anyone else between you and</p> <p>23 Mr. Fletz in the Labor Relations hierarchy?</p> <p>24 A No.</p> <p>25 Q What are your principal responsibilities?</p> |

2 (Pages 2 to 5)

| Page 6  | Page 8  |
|---|---|
| <p>1 A Merger implementing agreements, trackage<br/>2 rights, corporate transactions, health and welfare,<br/>3 employee communications. A number of things -- a<br/>4 number of duties in labor relations.<br/>5 Q Insofar as those areas of concern are<br/>6 involved, you deal with the labor unions that represent<br/>7 the employees of the company?<br/>8 A Yes.<br/>9 Q Are there any particular crafts that you are<br/>10 assigned to?<br/>11 A No.<br/>12 Q So you deal with all of the crafts that are<br/>13 represented by labor organizations?<br/>14 A Many, not necessarily all, but many.<br/>15 Q You deal with the Brotherhood of Locomotive<br/>16 Engineers and Trainmen?<br/>17 A Yes.<br/>18 Q There came a time when the company wanted to<br/>19 change Implementing Agreement No. 17, correct?<br/>20 A Yes.<br/>21 Q What was the purpose of Implementing<br/>22 Agreement No. 17?<br/>23 A What 17 addressed was a diversion of trains<br/>24 from the Tulsa Creek, Madill Fort Worth corridor.<br/>25 Q That's M-a-d-i-l-l?</p>  | <p>1 Q And were they both general chairmen of their<br/>2 respective committees?<br/>3 A Yes.<br/>4 Q And Implementing Agreement 17 was entered<br/>5 into by virtue of conditions that the Interstate<br/>6 Commerce Commission imposed upon the merger of<br/>7 Burlington Northern and Sante Fe; is that right?<br/>8 A What we were -- the operational change we<br/>9 were planning to do of moving these trains from the<br/>10 Creek Madill line to the Red Rock line would be a<br/>11 transaction under New York Dock. New York conditions<br/>12 had been imposed as a condition of the merger.<br/>13 Q So the company was required to negotiate an<br/>14 implementing agreement with the union before proceeding<br/>15 with that transaction?<br/>16 A Correct.<br/>17 MR. MUNRO: Objection. Calls for a legal<br/>18 conclusion. Go ahead.<br/>19 BY MR. WOLLY:<br/>20 Q The company did negotiate an implementing<br/>21 agreement with the union -- those two committees --<br/>22 before undertaking that transaction?<br/>23 A And with UTU as well.<br/>24 Q And UTU is a union who represents whom?<br/>25 A Conductors, brakemen, yardmen.</p>                |
| Page 7  | Page 9  |
| <p>1 A Yes, sure. To the Tulsa Black Bear, Oklahoma<br/>2 City, Fort Worth corridor that's all called the Red<br/>3 Rock.<br/>4 Q And the first corridor that you referred to<br/>5 was part of a former railroad company?<br/>6 A Sante Fe.<br/>7 Q And the latter was part of which former<br/>8 railroad company?<br/>9 A The Tulsa Creek Madill line was former BN<br/>10 former Frisco before that. The Red Rock line was<br/>11 former Sante Fe.<br/>12 Q And the employees who worked for BNSF as<br/>13 locomotive engineers are represented by two different<br/>14 groups within the BLET insofar as those two lines are<br/>15 concerned; is that correct?<br/>16 A Yes.<br/>17 Q One is more familiarly known as the Sante Fe<br/>18 General Committee of Adjustment and the other is the<br/>19 Frisco General Committee of Adjustment?<br/>20 A Yes.<br/>21 Q And who are the individuals you deal with --<br/>22 that you dealt with insofar as Implementing Agreement<br/>23 17 is concerned for those transactions?<br/>24 A Okay. John Mullens for the Sante Fe<br/>25 Committee and Tim Murphy for the Frisco Committee.</p> | <p>1 Q Employed by BNSF?<br/>2 A Yes.<br/>3 Q And UTU and BLET are considered the<br/>4 representatives of the operating craft employees of the<br/>5 company?<br/>6 A Yes.<br/>7 Q And you successfully negotiated Implementing<br/>8 Agreement 17 with BLET, correct?<br/>9 A Yes. It was a voluntary agreement.<br/>10 Q And there came a point in time where the<br/>11 company felt that Implementing Agreement 17 needed some<br/>12 amendment, correct?<br/>13 A Yes.<br/>14 Q And what was the amendment that the company<br/>15 decided it needed?<br/>16 A Implementing Agreement 17 addressed what it<br/>17 had to, which was the movement of the trains from the<br/>18 Creek Madill line over to Red Rock line. But because<br/>19 of some difficulties in the negotiation and during the<br/>20 negotiation, the former Frisco personnel that were<br/>21 handling the trains on the Red Rock line under 17 were<br/>22 severely constrained as to what they could do while<br/>23 traversing the Red Rock line. And the agreement was in<br/>24 the nature of train specific designations. In other<br/>25 words, the former Frisco people would handle a train</p> |

3 (Pages 6 to 9)

| Page 10   | Page 12   |
|---|---|
| <p>1 called T-u-l-t-p-l but perhaps not another train<br/>2 designated T-u-l-e-a-p even though between Tulsa and<br/>3 Fort Worth those trains were indistinguishable. Beyond<br/>4 Fort Worth, they went in different directions. But --<br/>5 they didn't even do that. But between Tulsa and Fort<br/>6 Worth, they were indistinguishable. Yet, Rick's people<br/>7 could only handle the one that was specifically<br/>8 designated the T-u-l-t-p-l but not an otherwise<br/>9 indistinguishable train that had a different symbol<br/>10 designation.<br/>11 Q And that's because Implementing Agreement 17<br/>12 specifically described by train designation what trains<br/>13 each group could handle?<br/>14 A That is correct.<br/>15 Q And so the company wanted to change that?<br/>16 A And I believe Rick as well.<br/>17 Q But it was the company who initiated the<br/>18 negotiation for Implementing Agreement 17, right?<br/>19 A I served the notice and kicked it off, yes.<br/>20 MR. MUNRO: Wendell, make sure that Mike is<br/>21 finished his question.<br/>22 THE WITNESS: Okay.<br/>23 BY MR. WOLLY:<br/>24 Q And that is the standard procedure. The<br/>25 company will serve a notice under the New York Dock</p> | <p>1 MR. MUNRO: I am sorry to interrupt again.<br/>2 Just make sure you give a verbal answer.<br/>3 MR. WOLLY: I think he did.<br/>4 BY MR. WOLLY:<br/>5 Q Now, insofar as the problem that you<br/>6 discussed a few minutes earlier about crews being tied<br/>7 to trains by train designation, which of the four<br/>8 points that are in Exhibit No. 1 relate to that?<br/>9 A One and two.<br/>10 Q So looking at number one, if the Fort Worth<br/>11 to Oklahoma City and the Oklahoma City to Tulsa pools<br/>12 could handle all the trains moving between Fort Worth<br/>13 and Tulsa, then the designation problem would be cured?<br/>14 A Yes.<br/>15 Q And on this document, just so that we are<br/>16 clear, F-T-W is Fort Worth and O-K-C is Oklahoma City,<br/>17 right?<br/>18 A That is correct. And T-U-L is Tulsa.<br/>19 Q And number two has a similar-type provision.<br/>20 It says, Temple to Gainesville and Gainesville to<br/>21 Arkansas City -- and I take it, it is missing the word<br/>22 pools -- should handle all trains moving between Temple<br/>23 Fort Worth and Arkansas City; is that right?<br/>24 A That is correct.<br/>25 Q And for purposes of clarity, T-e-m stands for</p>  |
| Page 11   | Page 13   |
| <p>1 conditions that will trigger negotiations?<br/>2 A That is correct.<br/>3 Q And during those negotiations -- let me show<br/>4 you an E-mail. I guess we will mark this as Deposition<br/>5 Exhibit 1, please.<br/>6 (Exhibit No. 1, marked for identification.)<br/>7 BY MR. WOLLY:<br/>8 Q I show you a document that has been marked<br/>9 Deposition Exhibit 1. That's an E-mail that you sent<br/>10 to Pat Williams and Rick Gibbons, correct?<br/>11 A Yes.<br/>12 Q And was that before or after the formal<br/>13 notice?<br/>14 A I am not certain. I believe it preceded.<br/>15 Q And in this E-mail you lay out for the two<br/>16 union general chairmen the elements of changes to<br/>17 Implementing Agreement 17 that the company believed<br/>18 should be included in that revised agreement, correct?<br/>19 A Yes, that is correct.<br/>20 Q And then you ask them at the bottom whether<br/>21 there is anything else that they think should be<br/>22 included?<br/>23 A Yes.<br/>24 Q Essentially, right?<br/>25 A (Witness nodding.)</p>   | <p>1 Temple. G-a-i-n-s stands for Gainesville, correct?<br/>2 A That is correct.<br/>3 Q And A-r-k C-t-y stands for Arkansas City?<br/>4 A That is correct.<br/>5 Q What would have been the effect of number<br/>6 three, which says, There should be a full operational<br/>7 integration (any crew can do any work at any point)<br/>8 between Fort Worth and Black Bear?<br/>9 A As I said, under 17 and its side letters as<br/>10 it finally was signed, the Frisco crews were actually<br/>11 barred from doing any intermediate work along the<br/>12 entire Red Rock line, which was from Black Bear to Fort<br/>13 Worth. In other words, they couldn't make pick-ups.<br/>14 They couldn't make set-outs. They couldn't do<br/>15 intermediate switching. They couldn't do anything,<br/>16 except set out broken, bad order cars and their own<br/>17 train. What this number three was a proposal to do was<br/>18 to say that they could work along the line just like<br/>19 Pat's crews along the line. If there were cars set,<br/>20 they would be able to set them out. If there were cars<br/>21 to be picked up, they would be able to pick them up.<br/>22 Q Under 17 without this change, what would<br/>23 happen if a Frisco crew had a car to set out along that<br/>24 line?<br/>25 A They couldn't. They were contractually</p> |

| Page 14   | Page 16   |
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| <p>1 barred from doing it. If they nevertheless did it,<br/> 2 both crews would end up having a claim.<br/> 3 Q A claim of contract violation?<br/> 4 A Yes. And we often ended up having the trains<br/> 5 out of Fort Worth having a Gainesville set-out. And<br/> 6 after a lot of difficulty, we ended up coming up with a<br/> 7 extremely cumbersome way of doing it that I believe is<br/> 8 contractually permissible. But there are still claims<br/> 9 even on that.<br/> 10 Q So the Frisco crews essentially would just be<br/> 11 allowed to deliver a train from the starting point to<br/> 12 the ending point along that line without anything else<br/> 13 or there would be claims filed?<br/> 14 A That is correct.<br/> 15 Q And these claims, if sustained, would result<br/> 16 in BNSF having to pay penalties to the employees,<br/> 17 right?<br/> 18 A That is correct.<br/> 19 Q And number four in the four items that you<br/> 20 said in Exhibit 1 a reformed Implementing Agreement 17<br/> 21 should cover is work allocation in Fort Worth to<br/> 22 Oklahoma City and Oklahoma City, Tulsa pools to be<br/> 23 determined.<br/> 24 I take it that meant that there would be some<br/> 25 provision in the reformed agreement that dealt with</p> | <p>1 Committee, ratified, but the Sante Fe Committee did<br/> 2 not?<br/> 3 A That is my understanding.<br/> 4 Q As a result of that, under the New York Dock<br/> 5 conditions, the company invoked arbitration?<br/> 6 A I did.<br/> 7 Q And the purpose of the arbitration was to<br/> 8 determine what the implementing agreement that reformed<br/> 9 Implementing Agreement 17 would be?<br/> 10 A That is correct.<br/> 11 Q I am going to show you the petition that was<br/> 12 filed in this case by the Brotherhood of Locomotive<br/> 13 Engineers and just ask you to tell me whether or not<br/> 14 certain of the exhibits are authentic. Exhibit A is<br/> 15 identified in the petition as BNSF Implementing<br/> 16 Agreement 17.<br/> 17 Is that document Implementing Agreement 17?<br/> 18 A It is Implementing Agreement 17. However, it<br/> 19 lacks the side letter.<br/> 20 Q So it is the basic agreement without the side<br/> 21 letters?<br/> 22 A That is correct.<br/> 23 Q Exhibit B to the petition, as identified in<br/> 24 the petition, has the award resulting from the<br/> 25 arbitration that you just testified about; is that</p> |
| Page 15   | Page 17   |
| <p>1 this issue?<br/> 2 A I had contemplated that. I knew from<br/> 3 discussions that we had had and that I had with<br/> 4 Mr. Gibbons and Mr. Williams' predecessors that the<br/> 5 Sante Fe people thought that perhaps they should have<br/> 6 some work equity in what otherwise had been under 17<br/> 7 Frisco pools.<br/> 8 Q And you did, in fact, enter into negotiations<br/> 9 with the two general committees over these issues,<br/> 10 didn't you?<br/> 11 A Yes.<br/> 12 Q And there came a point in time where you<br/> 13 reached tentative agreements -- a tentative agreement<br/> 14 that was initialled by both committee general chairmen<br/> 15 correct?<br/> 16 A That is correct.<br/> 17 Q And under the union's rules, those committees<br/> 18 were put out for ratification amongst the members who<br/> 19 were affected. That's your understanding, right?<br/> 20 A I don't have direct personal knowledge of<br/> 21 that, but that is my understanding.<br/> 22 Q It was subject to some kind of ratification<br/> 23 procedure?<br/> 24 A That's my understanding.<br/> 25 Q And one of the committees, the Frisco</p>   | <p>1 correct?<br/> 2 A That is correct.<br/> 3 Q And --<br/> 4 A There was also an attachment there which<br/> 5 was -- yes. The initial agreement is attached.<br/> 6 Q So after the six pages of the actual award is<br/> 7 Implementing Agreement 17A that the arbitrator imposed<br/> 8 A That is correct, with side letters.<br/> 9 Q So it is complete?<br/> 10 A Yes.<br/> 11 Q The implementing agreement that is attached<br/> 12 to the award is not signed. It has initials on it. Is<br/> 13 that the condition that it was in when it was agreed to<br/> 14 by the general chairmen and you?<br/> 15 A Yes.<br/> 16 Q Was there ever a fully signed version of this<br/> 17 created?<br/> 18 A No.<br/> 19 Q But the parties recognized that this is the<br/> 20 agreement that is in place -- 17A?<br/> 21 A When there is an arbitration award imposing<br/> 22 an agreement, I don't believe unless the parties choose<br/> 23 to, they need at that point to sign it. There is an<br/> 24 award that says this, whatever this may be. The<br/> 25 attachment to the award is the implementing agreement.</p>   |

5 (Pages 14 to 17)



| Page 18  | Page 20   |
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| <p>1 Q Exhibit C to the petition is identified in</p> <p>2 the petition as a letter, dated August 4, 2004, that</p> <p>3 General Chairman Rick Gibbons sent to you. Is that</p> <p>4 what it is?</p> <p>5 A It is.</p> <p>6 Q And you did receive that?</p> <p>7 A Yes, I did.</p> <p>8 Q Exhibit D is described in the petition as a</p> <p>9 letter that you sent to Rick Gibbons and Pat Williams</p> <p>10 on August 12, 2004. Is it that?</p> <p>11 A That is correct.</p> <p>12 Q And Exhibit E to the petition is identified</p> <p>13 in the petition as a letter, dated September 1, 2004,</p> <p>14 that Rick Gibbons sent to you. Isn't that indeed what</p> <p>15 it is?</p> <p>16 A It is.</p> <p>17 Q And you did receive that?</p> <p>18 A Yes, I did.</p> <p>19 Q When you approached the two general</p> <p>20 committees to change Implementing Agreement 17 to</p> <p>21 achieve what ultimately became Implementing Agreement</p> <p>22 17A, did you believe that those changes required the</p> <p>23 consent of the union?</p> <p>24 A Yes.</p> <p>25 Q And you understood that Implementing</p>                             | <p>1 through every page of the exhibits, but there is an</p> <p>2 Exhibit 15. And that was the last number.</p> <p>3 MR. WOLLY: Don, can we stipulate that this</p> <p>4 is the company's submission?</p> <p>5 MR. MUNRO: Yes.</p> <p>6 BY MR. WOLLY:</p> <p>7 Q And in presenting the company's case to the</p> <p>8 arbitrator -- I am sorry. Let me just ask you. That's</p> <p>9 your signature on page BNSF 21, isn't it?</p> <p>10 A It is.</p> <p>11 Q And you were the author of this submission?</p> <p>12 A Yes.</p> <p>13 Q And in the proceeding in front of the</p> <p>14 arbitrator, the company took the position that the</p> <p>15 Implementing Agreement 17A that had been negotiated</p> <p>16 with the two general chairmen should, in fact, be the</p> <p>17 implementing agreement that the arbitrator imposed</p> <p>18 unchanged?</p> <p>19 A Yes.</p> <p>20 Q And the reason for that was -- the reason</p> <p>21 that the company put forward for that was that the</p> <p>22 negotiated agreement represented the best and fairest</p> <p>23 deal between the parties, right?</p> <p>24 A That was my belief.</p> <p>25 Q And were there proposals presented by either</p>   |
| Page 19  | Page 21   |
| <p>1 Agreement 17 could not be changed unilaterally by the</p> <p>2 company, didn't you?</p> <p>3 A Yes.</p> <p>4 Q And that would be the same as for any</p> <p>5 implementing agreement that the company and the union</p> <p>6 entered into?</p> <p>7 A And it is also true of UTU Implementing</p> <p>8 Agreement 17.</p> <p>9 Q It would actually be the case for any</p> <p>10 implementing agreement that the company entered into</p> <p>11 with any labor union?</p> <p>12 A Yes.</p> <p>13 Q I am going to show you a document that was</p> <p>14 produced by BNSF in this proceeding, which carries at</p> <p>15 the bottom stamp numbers BNSF 14 through BNSF 99, the</p> <p>16 cover of which says, Company's Submission. This is the</p> <p>17 submission that was presented to the arbitrator in the</p> <p>18 proceeding that led to Implementing Agreement 17A,</p> <p>19 isn't it?</p> <p>20 A Yes, with exhibits.</p> <p>21 Q All right. The complete submission did have</p> <p>22 exhibits attached?</p> <p>23 A Yes.</p> <p>24 Q And this is the complete submission?</p> <p>25 A Yes, it appears to be. I have not gone</p> | <p>1 of the two committees to the arbitrator that would have</p> <p>2 changed any of the terms of the agreement?</p> <p>3 A My recollection is that neither submission</p> <p>4 from the union had an alternative text that they were</p> <p>5 urging that the board adopt. However, in their</p> <p>6 arguments in the text of their submission, I believe</p> <p>7 both and certainly General Chairman Williams'</p> <p>8 submission raised issues about the fairness or the</p> <p>9 appropriateness of certain provisions in the initial</p> <p>10 agreement.</p> <p>11 Q I am going to show you documents that were</p> <p>12 produced by the company that run from pages BNSF 100 to</p> <p>13 pages BNSF 124. This appears to be the submission that</p> <p>14 Mr. Williams submitted on behalf of the Sante Fe</p> <p>15 Committee. Is that what that is?</p> <p>16 A It appears to be, yes.</p> <p>17 Q And can you show me what part of the</p> <p>18 submission you were referring to in answering my</p> <p>19 previous question about the questions that were raised</p> <p>20 by Mr. Williams about Implementing Agreement 17A?</p> <p>21 A At the bottom of page two and essentially all</p> <p>22 of page three, he says, Proposed new agreement goes a</p> <p>23 bit too far in allocating business in this corridor to</p> <p>24 the former Frisco crews, most especially in the Fort</p> <p>25 Worth to Oklahoma City and Oklahoma City to Tulsa. It</p> |

| Page 22  | Page 24  |
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| <p>1 then goes on to describe his version of relative trains<br/>2 and traffic in an attempt to substantiate that<br/>3 proposition.<br/>4 Q And in issuing his award, the arbitrator<br/>5 rejected those arguments that Mr. Williams made,<br/>6 correct?<br/>7 A That is correct.<br/>8 Q I am also going to show you documents that<br/>9 are numbered BNSF 125 through BNSF 158, which purports<br/>10 to be the submission that was presented to the<br/>11 arbitrator by Mr. Gibbons on behalf of his committee.<br/>12 That's what that is, isn't it?<br/>13 A Yes. Again, I haven't looked through every<br/>14 page of the exhibit, but it appears to be, yes.<br/>15 MR. WOLLY: Can we go off the record for a<br/>16 minute?<br/>17 (Discussion was held off the record.)<br/>18 (Exhibit Nos. 2 through 4, marked for<br/>19 identification.)<br/>20 MR. WOLLY: For the purposes of the record,<br/>21 the parties have agreed to make the company's<br/>22 submission as Exhibit 2, the Sante Fe General<br/>23 Committee's submission as Exhibit 3, and the Frisco<br/>24 Committee's submission as Exhibit 4.<br/>25 BY MR. WOLLY:</p> | <p>1 Q And where were you when you took that call?<br/>2 A In my office.<br/>3 Q And where was he, if you know?<br/>4 A I don't know.<br/>5 Q You previously identified Exhibit C to the<br/>6 petition, which is Mr. Gibbons' August 4, 2004 letter<br/>7 to you?<br/>8 A Yes.<br/>9 Q Did the conversation that you are referring<br/>10 to occur before or after you received that letter?<br/>11 A I believe it would have been after.<br/>12 Q And Exhibit D to the petition is your August<br/>13 12 letter to Mr. Gibbons and Mr. Williams?<br/>14 A Yes.<br/>15 Q Did the conversation with Mr. Gibbons occur<br/>16 before or after August 12?<br/>17 A Before.<br/>18 Q So it was your recollection -- it is your<br/>19 recollection that that conversation occurred sometime<br/>20 between August 4 and August 12, 2004?<br/>21 A Yes.<br/>22 Q To the best of your recollection, tell us<br/>23 what he said to you and what you said to him during<br/>24 that conversation?<br/>25 A With Rick Gibbons, I ended up saying, Look, I</p>   |
| Page 23  | Page 25  |
| <p>1 Q Mr. Bell, other than these three submissions,<br/>2 was there any additional documentation submitted to the<br/>3 arbitrator?<br/>4 A I don't believe so. I don't recollect any.<br/>5 Q Now, in responding to BLET's petition in this<br/>6 case -- let me strike that. Was Implementing Agreement<br/>7 17A ever fully implemented?<br/>8 A It has not been as yet.<br/>9 Q But part of Implementing Agreement 17A was<br/>10 put into effect, wasn't it?<br/>11 A At the request of General Chairman Gibbons<br/>12 and Vice President Speagle, yes.<br/>13 Q How did that request manifest itself to you?<br/>14 A Telephone calls.<br/>15 Q Okay. More than one?<br/>16 A Yes.<br/>17 Q Were both men on all of the phone calls?<br/>18 A No.<br/>19 Q So were both men on any of the phone calls?<br/>20 A I don't believe so.<br/>21 Q Okay. Who called you first?<br/>22 A It would have been Rick Gibbons, general<br/>23 chairman of the Frisco Committee.<br/>24 Q And when was that?<br/>25 A In early August.</p>  | <p>1 object. I can't put 17A in. Operations can't handle<br/>2 having different terminals where conductors and<br/>3 engineers change. I have to end up having the UTU<br/>4 piece. I am going to be meeting with UTU.<br/>5 At that time I didn't think there would be an<br/>6 extended delay in getting a similar agreement with<br/>7 UTU. But I was not in a position to put just the BLE<br/>8 piece in place. At that point, he -- my recollection<br/>9 is that Rick called me back and said, Well, at least<br/>10 you could do the allocations because the allocations<br/>11 are a seniority arrangement about who gets to bid for<br/>12 what jobs and are separate and apart from train<br/>13 operations. And initially I said, no, I am going to do<br/>14 the whole agreement all at once, once I get the UTU<br/>15 piece.<br/>16 Q Now, the reason you needed a UTU piece was<br/>17 that UTU puts employees on the same trains that the<br/>18 locomotive engineers are essentially driving, correct?<br/>19 A That is correct. And UTU had an Implementing<br/>20 Agreement 17 just like BLE did with the same sort of --<br/>21 there are some differences, but they aren't<br/>22 consequential. They did end up having the same train<br/>23 designation restrictions. They did have the same<br/>24 operational restrictions as to what work the Frisco<br/>25 crews could do on the Red Rock, so.</p> |

7 (Pages 22 to 25)

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1 Q And so it was your position that until you  
2 had essentially a companion agreement with UTU, it was  
3 not feasible for the company operationally to implement  
4 one without the other?

5 A That had been my thought. Upon Rick's  
6 urging, either more like before that August 4 letter, I  
7 specifically inquired of Operations if it could be done  
8 even though I thought not. But I am not an operating  
9 officer. I am a labor relations officer, so I will  
10 check with the operating officers. I did check with  
11 the operating officers. And the answer I got back  
12 essentially was you are out of your mind. So --

13 Q And so that's what you told him?

14 A Yes.

15 Q Was anything else related to Implementing  
16 Agreement 17A discussed in that conversation?

17 A No, not that I recollect. There may have  
18 been.

19 Q Did you have any subsequent conversation with  
20 General Chairman Gibbons about this subject?

21 A We had a number of discussions from really  
22 his first E-mail, the E-mail of July 21. And I think  
23 we may well have had phone conversations before that  
24 because Rick was eager, I think it's fair to say, to  
25 get the agreement put in place. And I was resisting

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1 the vice president assigned to this, was representing  
2 BLET on both committees. And he is saying in effect,  
3 Come on, you can do the one part while at least  
4 implicitly recognizing that we did have a problem  
5 putting in the operational parts until I had a UTU  
6 agreement which, as he knew also I did not have.

7 Q What did you say in response to what he said  
8 to you?

9 A I will take a look at it. And if I can, I  
10 will.

11 Q And shortly thereafter you did?

12 A I took a look at it that afternoon, tried to  
13 see if there would be any problem in doing one piece  
14 without having the other piece in place yet. Since  
15 Article 3 relates to seniority allocations, not  
16 operational changes, I reluctantly thought, well, I  
17 guess we can. And so I put out the letter.

18 Q Now, subsequently to your putting out that  
19 letter, you received a protest from General Chairman  
20 Gibbon about that partial implementation, didn't you?

21 A Yes.

22 Q Exhibit E to the petition is a September 1,  
23 2004 letter that Mr. Gibbons wrote to you protesting  
24 what you did, isn't it?

25 A It is.

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1 until I had the other side of the coin.

2 Q Do you recall any other conversation other  
3 than the one you testified to at some length a few  
4 minutes ago in which you believe General Chairman  
5 Gibbons requested a partial implementation of 17A?

6 A I am not certain. The subject may have come  
7 up more than once; it may not have. I don't have  
8 transcriptions or notes of each of the conversations we  
9 had. And so it may have only come up once or it may  
10 have come up more than once. I am not concern.

11 Q Now, you say you also talked to BLET Vice  
12 President Steve Speagle about this subject?

13 A Yes, that is correct.

14 Q Was that before or after August 4?

15 A My recollection is it was early in the  
16 afternoon of August 12.

17 Q Okay. And were you with him personally?

18 A No.

19 Q Okay. And did he call you or you call him?

20 A He called me.

21 Q And what did he say to you and what did you  
22 say to him during that conversation?

23 A He ended up asking if I could put in the job  
24 allocation part of 17A, which I have to say carried  
25 more weight. He had been in the negotiations. He, as

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1 Q Prior to your receiving that letter, did you  
2 have any oral discussion with Mr. Gibbons about what  
3 you had done?

4 A Probably, but I don't specifically recollect.

5 Q When you received the September 1 letter from  
6 Mr. Gibbons, what was your reaction?

7 A Sort of, you know, we are just beating the  
8 same horse. I had said and given, I thought, good  
9 reason why Articles 1 and 2 could not be implemented  
10 unless and until I had the other half of the garment --  
11 the agreements with UTU. And here he is still saying,  
12 even though I, at their request, had given the  
13 seniority allocations and given the Frisco Committee a  
14 good part of what it wanted in this whole negotiation,  
15 still we are getting banged on to put in the  
16 operational changes that I can't do.

17 Q Now, Mr. Gibbons in the second paragraph of  
18 his letter says, As we have previously discussed and  
19 corresponded on this matter, we feel the carrier does  
20 not have the right nor the authority to parcel out  
21 portions of this award imposed by the arbitration  
22 committee.

23 Is it your testimony that, in fact, those  
24 discussions and correspondence did not take place?

25 A I don't recollect a prior discussion with

| Page 30  | Page 32  |
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| <p>1 Rick saying that personal implementation was invalid or<br/>2 barred somehow. There may have been. I am not saying<br/>3 there was not. I believed having written the language<br/>4 that Article 4, Section 3 of the imposed implementing<br/>5 agreement meant that the agreement would not be<br/>6 effective until I, the carrier, gave the five-day<br/>7 written notice called for by that provision. And I had<br/>8 not given that notice initially as to the entire<br/>9 agreement and at no time as to Articles 1 and 2.<br/>10 Q Of what value would it be to Mr. Gibbons to<br/>11 have the Article 4, Section 3 provisions put in place<br/>12 if the operational changes were not also put in place?<br/>13 MR. MUNRO: Objection. Unclear. I think you<br/>14 mean the Article 3 changes.<br/>15 MR. WOLLY: You are correct. I am sorry.<br/>16 BY MR. WOLLY:<br/>17 Q Of what value would it have been to<br/>18 Mr. Gibbons to have Article 3 and the side letters put<br/>19 into effect without having the operational changes set<br/>20 forth in the agreement also put in effect?<br/>21 A Oh, it would have significant favorable<br/>22 impact because what that article did was give the<br/>23 Frisco people from Tulsa from Madill from Fort Worth<br/>24 allocations in the Sante Fe pools at Arkansas City, and<br/>25 at Gainesville.</p> | <p>1 BY MR. WOLLY:<br/>2 Q I am showing you a document that has been<br/>3 marked Deposition Exhibit 5, which is a document<br/>4 numbered BNSF 176, that was produced by the railroad in<br/>5 this proceeding. This is an E-mail that you sent to<br/>6 Pat Williams with copies to Rick Gibbons, Steve<br/>7 Speagle, and Jim Hagar, H-a-g-a-r, on November 10,<br/>8 2004, isn't it?<br/>9 A Yes.<br/>10 Q And in this second paragraph of that E-mail,<br/>11 you say that Rick and Steve convinced you that the<br/>12 railroad could go forward the allocations.<br/>13 What did they say that you recall that<br/>14 convinced you?<br/>15 A The conversations that I talked about<br/>16 previously.<br/>17 Q And then in the last sentence of that<br/>18 paragraph you say, I did that. And it now looks like<br/>19 no good deed goes unpunished.<br/>20 What did you mean by that?<br/>21 A Normally, if I have an agreement with BLET<br/>22 and I am awaiting a corresponding agreement with UTU,<br/>23 the BLET agreement, as I referred to in the first<br/>24 paragraph, simply goes on the shelf pending concluding<br/>25 the second negotiation -- the parallel negotiation.</p>   |
| Page 31  | Page 33  |
| <p>1 Q And did it also give the Sante Fe people<br/>2 access to some of the Frisco pools?<br/>3 A Nominally.<br/>4 Q And did access -- is it your testimony that<br/>5 access for the Frisco people to Sante Fe pools had<br/>6 value even without the operational changes that would<br/>7 have put more trains on the Sante Fe side?<br/>8 A Yes, absolutely. The Frisco people promptly<br/>9 took jobs at Ark City -- Arkansas City. I might add<br/>10 displacing post-merger's people that represented by<br/>11 Pat's committee.<br/>12 Q In your opinion, why would Mr. Gibbons then<br/>13 be insisting that the entire agreement be put into<br/>14 place?<br/>15 A I don't know and I have never entirely<br/>16 understood. I realize that he, from our discussions,<br/>17 feels very possessive of all of the Tulsa traffic. But<br/>18 why in this case he couldn't wait until I did conclude<br/>19 matters with UTU compared with other situations where<br/>20 either BLET precedes UTU in reaching an agreement or<br/>21 vice versus, typically the first party ends up waiting<br/>22 on the second.<br/>23 MR. WOLLY: Can you mark this as Exhibit 5,<br/>24 please.<br/>25 (Exhibit No. 5, marked for identification.)</p>  | <p>1 It's the other agreement that I have to have to have<br/>2 the operational change.<br/>3 What ended up happening here, as I have<br/>4 testified and as the record shows, I, upon request, did<br/>5 put in the one part while keeping the rest of the<br/>6 agreement on the shelf. And I felt somewhat aggrieved<br/>7 frankly that my action in acceding to that request to<br/>8 put in the one part ended up laying some kind of ground<br/>9 work for saying that therefore the whole thing should<br/>10 have been put in. If I had thought that that<br/>11 contention would have come up, I would have simply left<br/>12 the entire thing on the shelf. And the Frisco people<br/>13 would not have gotten the job allocations at Ark City<br/>14 that they did at the time that they did.<br/>15 Q Has Implementing Agreement 17A -- I believe<br/>16 you already testified that it has never been fully<br/>17 implemented. Why is that?<br/>18 A Because, as I have said, I needed the<br/>19 parallel agreement with UTU. I attempted to get that<br/>20 parallel agreement with UTU. I have had three<br/>21 negotiating sessions. And more general chairmen are<br/>22 involved on Sante Fe's -- on the UTU side. So it is<br/>23 harder to corral them all at the same time. But I have<br/>24 gone to some lengths to end up having those sessions.<br/>25 And what ended up happening was that I</p> |

9 (Pages 30 to 33)

| Page 34   | Page 36   |
|---|---|
| <p>1 thought it would be easy having an award already<br/> 2 imposing what I was proposing with UTU. However, there<br/> 3 is another thing that is going on out on the Red Rock<br/> 4 sub, the line from Black Bear to Oklahoma City through<br/> 5 Gainesville and to Forth Worth. And that is that we<br/> 6 have another negotiation going on with both UTU and<br/> 7 BLET that would change the terminals all along the<br/> 8 line, all the way from Kansas City through Ark City to<br/> 9 Oklahoma City and then Oklahoma City to Fort Worth and<br/> 10 beyond down to Temple, Texas.</p> <p>11 When I had my last session with UTU on this,<br/> 12 they began asking me a whole bunch of questions about,<br/> 13 okay, if the interdivisional work ends up coming out<br/> 14 this way, how does that affect 17A or the UTU draft of<br/> 15 17A. If the interdivisional negotiation goes some<br/> 16 other way, how does that affect it.</p> <p>17 The longer that negotiating session went on,<br/> 18 the more I could see that the matter simply wasn't<br/> 19 right for arbitration because before the arbitrator<br/> 20 they would be able to raise all of those same<br/> 21 questions. They would be able to say Mr. or<br/> 22 Ms. Arbitrator, this is not a simple case of following<br/> 23 Referee O'Brien and BLET 17A. Instead, right now and<br/> 24 with the interdivisional negotiations going on, this is<br/> 25 a bloody mess. You would have to issue, Mr. or</p> | <p>1 A He was at that time a superintendent of the<br/> 2 Texas Division under Section 4 of New York Dock.<br/> 3 Notices like this have to be posted on bulletin boards<br/> 4 convenient to the interested employees on the<br/> 5 railroad. And I was asking him to post the notice on<br/> 6 those bulletin boards. This would be at points like<br/> 7 Madill, Tulsa, Oklahoma City, Gainesville, Ark City.<br/> 8 And he was the superintendent of all of those places.<br/> 9 (Exhibit No. 7, marked for identification.)<br/> 10 BY MR. WOLLY:<br/> 11 Q Deposition Exhibit 7 appears to be a letter,<br/> 12 dated February 25, 2005, from General Chairman Gibbons<br/> 13 to you. Do you recall receiving this letter?<br/> 14 A I did.<br/> 15 Q Just for the record, when you got it, did it<br/> 16 say in the upper right-hand corner, note: Fax<br/> 17 percentage, 215?<br/> 18 A I don't remember that.<br/> 19 Q Okay. In this letter, Mr. Gibbons takes<br/> 20 issue with you as to not fully implementing<br/> 21 Implementing Agreement 17A, correct?<br/> 22 A That is correct.<br/> 23 Q And in the third paragraph of the letter, he<br/> 24 disputes some of the operating disadvantages that you<br/> 25 said would occur were it to be -- were Implementing</p>  |
| Page 35   | Page 37   |
| <p>1 Ms. Arbitrator, some kind of contingent award depending<br/> 2 on what happens in the other negotiation.</p> <p>3 And I, as an advocate, have to be able to<br/> 4 think of what an arbitrator would do with a given<br/> 5 dispute. And I could see that with these kind of<br/> 6 questions being raised, the arbitrator would be<br/> 7 thoroughly befuddled and not have good guidance and be<br/> 8 rather confused and that we would be presenting a<br/> 9 confusing picture. So I really thought that I had to<br/> 10 wait until the dust settled on that other negotiation,<br/> 11 which it still has not done as of this date. Before, I<br/> 12 was in a position to sit down with UTU and say, okay,<br/> 13 final answer. Are you going to do a 17A like the BLET<br/> 14 has done or do I have to go to arbitration?</p> <p>15 Q Let me ask you to identify a few other<br/> 16 documents that are relevant to this proceeding.<br/> 17 (Exhibit No. 6, marked for identification.)<br/> 18 BY MR. WOLLY:<br/> 19 Q Mr. Bell, Deposition Exhibit 6 is the formal<br/> 20 New York Dock notice that you gave to General Chairman<br/> 21 Gibbons and Williams to formally start the negotiations<br/> 22 for Implementing Agreement 17A, correct?<br/> 23 A That is correct.<br/> 24 Q You copy someone on the bottom named David<br/> 25 Galassi, G-a-l-a-s-s-i. Who is that person?</p>   | <p>1 Agreement 17A to be fully implemented without a<br/> 2 parallel agreement with UTU, right?<br/> 3 A He attempts to do that.<br/> 4 Q I take it you don't agree with what he has to<br/> 5 say there.<br/> 6 A Factually I don't disagree, though he doesn't<br/> 7 mention what would happen at Black Bear as well. But<br/> 8 the description of what he is saying there where we end<br/> 9 up with additional crew changes is, in fact, the very<br/> 10 problem that our Operating Department is finding<br/> 11 intolerable in putting in BLET 17A without a parallel<br/> 12 UTU 17A. He is saying it is not a problem. Our<br/> 13 operating people are saying big problem.<br/> 14 Q Do those operating people say that to you<br/> 15 orally or in writing or both?<br/> 16 A Orally and by E-mail.<br/> 17 Q And are the E-mails that you receive<br/> 18 regarding that amongst those that you have given to<br/> 19 Mr. Munro for production in this case?<br/> 20 A No, they were not because I didn't print<br/> 21 them. And so I didn't retain them. They are not in my<br/> 22 file. But I did at least once E-mail the<br/> 23 superintendent of the Texas Division asking can we do<br/> 24 what Rick is proposing even, as I described earlier, I<br/> 25 thought not. But I am not -- that's not my call.</p> |

10 (Pages 34 to 37)

| Page 38   | Page 40   |
|---|---|
| <p>1 Q And those E-mails were deleted from your<br/>2 system or you just didn't print them out?<br/>3 A I didn't print them out.<br/>4 Q So they are still there?<br/>5 A I don't know. I don't know what the E-mail<br/>6 retention is.<br/>7 Q You didn't personally delete them?<br/>8 A No.<br/>9 Q Could they be printed out and produced?<br/>10 MR. MUNRO: We can check and see if they<br/>11 still exist.<br/>12 MR. WOLLY: If they still exist, you will let<br/>13 us know?<br/>14 MR. MUNRO: Yeah, we will check on that.<br/>15 (Exhibit No. 8, marked for identification.)<br/>16 MR. WOLLY:<br/>17 Q I am putting in front of you Deposition<br/>18 Exhibit 8. That appears to a March 9, 2005 letter that<br/>19 General Chairman Gibbons sent to you. Is that what it<br/>20 is?<br/>21 A I don't know. And the reason I don't know is<br/>22 I have seen this letter. And, in fact, the text of<br/>23 Exhibit 7 and Exhibit 8 are identical. I know I<br/>24 received a letter from him with these words and these<br/>25 arguments, but I am not sure if it was February 25 or</p>  | <p>1 Q And is that because those were agreed to<br/>2 without the need to go to arbitration?<br/>3 A Yes.<br/>4 Q And is it the company's position that this<br/>5 implementing agreement was not, in fact, implemented?<br/>6 A It was not. I have applied the expanded<br/>7 switching limits in Attachment E but that is it. We<br/>8 never operated trains as described in the agreement.<br/>9 Q And is your testimony just related to the<br/>10 parts of the implementing agreement that are Deposition<br/>11 Exhibit 9 or the complete implementing agreement that<br/>12 includes the other parts you refer to?<br/>13 A What I am saying is that the train operations<br/>14 described in Implementing Agreement No. 11, the<br/>15 four-page document that is attached and the Attachment<br/>16 B, description of train operations, had never happened.<br/>17 Q What about the provisions that you agreed to<br/>18 with the general committee representative former CB&amp;Q?<br/>19 A It never happened.<br/>20 Q So they have never been implemented?<br/>21 A No.<br/>22 Q And not even in part, then?<br/>23 A No.<br/>24 Q On page 214 of this document, there is a<br/>25 signature on the first general chairman line and under</p> |
| Page 39   | Page 41   |
| <p>1 March 9. One of them is a true and authentic document<br/>2 that I did receive. I don't remember receiving two of<br/>3 them. I would think the exhibits we produced to you<br/>4 would have the one I did receive.<br/>5 MR. WOLLY: Let's go off the record for a<br/>6 minute.<br/>7 (Discussion was held off the record.)<br/>8 (Exhibit No. 9, marked for identification.)<br/>9 BY MR. WOLLY:<br/>10 Q Mr. Bell, I have put in front of you a<br/>11 document that carries BNSF page numbers 207 to 219,<br/>12 which we have made Deposition Exhibit No. 9, which was<br/>13 presented to us as materials relating to Implementing<br/>14 Agreement No 11, which is an example of an agreement<br/>15 that the carrier chose not to implement after it was<br/>16 executed. Those are the words of your attorney.<br/>17 Is this the complete Implementing Agreement<br/>18 11?<br/>19 A My recollection is that these are what the<br/>20 arbitrator imposed, that the agreement and the<br/>21 attachments that were relevant to the Sante Fe<br/>22 Committee, who was the party in the arbitration. There<br/>23 were other attachments, if I recollect correctly, that<br/>24 were relevant to the BN former CB&amp;Q BLE Committee that<br/>25 aren't included here.</p> | <p>1 Brotherhood of Locomotive Engineers. That's the<br/>2 signature of D.L. McPherson, correct?<br/>3 A Yes.<br/>4 Q And how did it come to pass that he actually<br/>5 signed this agreement?<br/>6 A He is the general chairman on the former BN<br/>7 former CB&amp;Q Committee at that time. You will notice<br/>8 the next signature blank is blank, and that would have<br/>9 been for John Mullen, Pat Williams' predecessor. He<br/>10 did not sign --<br/>11 Q And --<br/>12 A -- or initial it or agree to it.<br/>13 Q Nor did you?<br/>14 A No, I initialed it.<br/>15 Q But you didn't sign it?<br/>16 A No.<br/>17 Q You testified a minute ago that as to page<br/>18 219, which is Attachment E, that you set up these new<br/>19 switching limits?<br/>20 A Yes.<br/>21 Q Under what authority did you act?<br/>22 A We had a signed agreement with the UTU<br/>23 Committee on the BN side. We had a signed agreement<br/>24 with the BLE Committee on the BN side. We had this<br/>25 arbitration award that posed the new switching limits.</p>  |

11 (Pages 38 to 41)

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1 And I eventually was able to get an agreement with the  
 2 UTU Committee on the Sante Fe's side. So all four  
 3 parties involved in setting the limits for Sante Fe  
 4 crews to come in and switch cars or for BN crews to  
 5 come in and switch cars in the Superior, Nebraska area  
 6 were in one way or another party to something that  
 7 embraced these post-designations -- that radius, as  
 8 described therein.

9 Q In the award on page 208, there is a sentence  
 10 in the middle of the page where the arbitrator says,  
 11 There is no dispute over Attachment E.

12 A I am sorry. What page?

13 Q Page 208.

14 A Yes, he says that.

15 Q You didn't have any disagreement with that  
 16 statement, did you?

17 A No.

18 Q And looking at page 214, that part of the  
 19 implementing agreement required the carrier to issue a  
 20 notice within a fixed period of time in order to make  
 21 the agreement effective, didn't it?

22 A Yes, it did.

23 Q And I take it your testimony is that that  
 24 notice was never issued by the carrier?

25 A That is correct.

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1 up to handle grain trains and coal trains as a bypass  
 2 route. So at that point, Operations didn't want what  
 3 we had ended up producing.

4 It is not ideally what we want to do. We  
 5 want to end up, you know, finding out what Operation  
 6 wants, sitting down, reaching agreements, putting them  
 7 in place. But if Operations needs a change during the  
 8 year, year and a half that it takes to negotiate these  
 9 things, then that is a fact. And because there was  
 10 some uncertainty about, it is why in this agreement  
 11 there is language at page 214 that doesn't make the  
 12 agreement automatic upon signature or automatic upon an  
 13 award but, rather, allows me, the carrier, to serve a  
 14 notice to make the agreement effective. I believe -- I  
 15 am not certain -- but I believe this was the first  
 16 agreement that I added language like that. And I had  
 17 it in both 17 and 17A as well.

18 Q Now, in a situation where the carrier does  
 19 proceed to put into effect an implementing agreement,  
 20 it then requires some subsequent agreement to rescind  
 21 it, doesn't it?

22 A I have been thinking about that. I am not  
 23 certain.

24 Q It does require some subsequent agreement to  
 25 change it?

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1 Q So this agreement essentially became nothing  
 2 at that point after that period of time passed; isn't  
 3 that right?

4 A That is correct. If I could.

5 Q I'm sorry?

6 A If I could perhaps expand on that answer. I  
 7 don't sit down and plan to reach futile agreements.  
 8 BNSF doesn't want to waste our labor relations  
 9 resources or the general chairman's and union vice  
 10 president's time reaching futile agreements. But what  
 11 does end up happening -- and it happened with  
 12 Superior. The idea of this Implementing Agreement 11  
 13 was that we would end up with a bypass for grain trains  
 14 and for some coal trains around Kansas City. Initially  
 15 after the merger had great congestion problems in  
 16 Kansas City, it began to look like we would need a  
 17 bypass for unit trains that weren't priority freights  
 18 and didn't need to move on a high-speed corridor. So  
 19 they sent me to go get the agreements to have such an  
 20 operation on the Superior corridor to have this bypass.

21 By the time we ended up reaching the  
 22 agreements and concluding it, we had found that we  
 23 didn't end up needing it and that the line through  
 24 Superior was going to require tens of millions, maybe  
 25 even hundreds of millions, in rehab funds to bring it

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1 A Yes.

2 Q Why do you believe that the situation might  
 3 be different if it were to be rescinded?

4 A Let's say that we reached an implementing  
 5 agreement to consolidate operations on some grain lines  
 6 out in west Texas. And we reach an agreement that it  
 7 allows for an operational integration out there. Let's  
 8 also say that some years subsequent we sell those lines  
 9 or lease them pursuant to STB procedures. In effect,  
 10 that action and our withdrawal from serving those lines  
 11 nullifies the implementing agreement. But I had not in  
 12 that situation actually sat down and reached a new  
 13 agreement nullifying the old agreement. The lines are  
 14 gone, the traffic is gone. An agreement at that  
 15 juncture is of historical interest.

16 Q Let me get this straight. If the company  
 17 essentially goes out of business on those lines, it  
 18 would not have to rescind or negotiate a rescission  
 19 agreement with the organization. But -- that's what  
 20 you are saying, right?

21 A I don't think so. But the substance of the  
 22 agreement, the integrated operation that the agreement  
 23 provided for, is no longer occurring.

24 Q And in that situation, there wouldn't be any  
 25 need to engage in any further negotiation regarding

| Page 46   | Page 48   |
|---|---|
| <p>1 that implementing agreement. It would just stay in<br/>2 place, but there would be nothing for it to apply to?<br/>3 A That seems to be what has happened.<br/>4 Q But in a situation where the company<br/>5 continues to operate the lines that are the subject of<br/>6 the implementing agreement, is it your belief that a<br/>7 rescission agreement would be required?<br/>8 A As I said, I have been thinking about that.<br/>9 I haven't reached a conclusion. And, in fact, the very<br/>10 substance of Implementing Agreement 17 on the movement<br/>11 of certain trains from the Creek Madill corridor over<br/>12 to the Red Rock corridor is now because of capacity<br/>13 constraints reversing itself. Those trains that were<br/>14 the subject of 17 are now almost entirely, not yet<br/>15 entirely, moved back to the Creek Madill line.<br/>16 Q But 17 remains in place, exempt insofar as it<br/>17 is amended by 17A?<br/>18 A That is correct. But some of the trains that<br/>19 are designated in 17, the specific train designations I<br/>20 described, are now back on the Creek Madill line just<br/>21 as they were in 1996.<br/>22 Q But with 17 in effect you still retain the<br/>23 right to move them back over to the other line?<br/>24 A We would have an agreement that would cover<br/>25 that, yes.</p> | <p>1 (A recess was held.)<br/>2 BY MR. WOLLY:<br/>3 Q Mr. Bell, you testified about phone<br/>4 conversations you had in August 2004 with Mr. Gibbons<br/>5 and Mr. Speagle. You didn't have a similar<br/>6 conversation with Mr. Williams, did you?<br/>7 A In terms of being urged to at least put in<br/>8 the job allocations, no. I do believe that I had phone<br/>9 conversations with Pat during that time period keeping<br/>10 him up to date and apprised of what I was talking about<br/>11 with Rick and with Steve.<br/>12 Q But you never got any consensus from<br/>13 Mr. Williams to partly implement Implementing Agreement<br/>14 17A, did you?<br/>15 A He wasn't arguing for it.<br/>16 Q And you didn't ask him if it was okay with<br/>17 him, did you?<br/>18 A I don't recollect asking that.<br/>19 Q He actually has consistently been of the<br/>20 position that it is the entire agreement or none of it,<br/>21 hasn't he?<br/>22 A I am sorry?<br/>23 Q He has consistently taken the position that<br/>24 you can implement the entire agreement or none of the<br/>25 agreement, hasn't he?</p> |
| Page 47   | Page 49   |
| <p>1 Q Right. The reason you entered into 17A was<br/>2 to move them from the Madill line over to the other<br/>3 line?<br/>4 A 17A was to fix --<br/>5 Q I am sorry. Seventeen gave you the authority<br/>6 to move them from the Madill line to the other line?<br/>7 A Yes.<br/>8 Q It didn't prevent you from moving them back<br/>9 to the Madill line, right?<br/>10 A No one has raised that contention.<br/>11 Q Well, that's your position at least, right?<br/>12 A Uh-huh.<br/>13 (Exhibit No. 10, marked for identification.)<br/>14 BY MR. WOLLY:<br/>15 Q What I am putting in front of you is<br/>16 Deposition Exhibit 10. This is the complete<br/>17 Implementing Agreement 11, isn't it?<br/>18 A It would appear to be, yes.<br/>19 MR. MUNRO: Mike, I would just like to note<br/>20 for the record that this document wasn't produced to<br/>21 us. I may or may not have it. I have an objection on<br/>22 that basis, but I reserve on that.<br/>23 THE WITNESS: It would appear to be, yes.<br/>24 MR. WOLLY: If we can take like a five-minute<br/>25 break.</p>  | <p>1 A He certainly did in that one E-mail that you<br/>2 have. I forget the number.<br/>3 Q And he is one of the parties to the<br/>4 implementing agreement?<br/>5 A Yes.<br/>6 MR. WOLLY: Those are all the questions that<br/>7 I have.<br/>8 MR. MUNRO: I just have a brief follow-up.<br/>9 EXAMINATION BY COUNSEL FOR THE<br/>10 BNSF RAILWAY COMPANY<br/>11 BY MR. MUNRO:<br/>12 Q Mr. Bell, in the design of Implementing<br/>13 Agreement 17A, Articles 1 and 2 deal with train<br/>14 operations and Article 3 deals with allocations,<br/>15 correct?<br/>16 A That is correct.<br/>17 Q As between those pieces, which part would you<br/>18 say was of more importance to the carrier?<br/>19 A Unquestionably Article 2, the one that would<br/>20 give us the operational freedom to make set-outs and<br/>21 pick-ups with Frisco crews along those corridors.<br/>22 Q As compared to the importance of getting that<br/>23 aspect squared away, how significant was it to you to<br/>24 get the allocations on Article 3?<br/>25 A It was not significant to the carrier. What</p>                               |



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1 the allocations are about is what the seniority pecking  
2 order is for bidding jobs at Ark City, at Gainesville,  
3 at Oklahoma City, and so on. And that is fundamentally  
4 an intra-union issue. We need certainty on that. But  
5 we, as a company, don't care if former Frisco people  
6 have priority over either former Santa Fe or  
7 post-merger employees. We simply need to know Group A  
8 followed by Group C followed by Group B or Group A  
9 followed by Group B followed by Group C.

10 Q So if that's the case, what incentive does  
11 the carrier have to partially implement Article 3, the  
12 allocations, but not the rest of it?

13 A Fundamentally I didn't have any. What I did  
14 have because I at the request of the organization, also  
15 felt that those allocations rectified some problems  
16 that had been occurring since 1996 or '97 in that the  
17 former Frisco did suffer job losses on the Madill  
18 corridor and had not previously been able to follow  
19 their work in the Sante Fe corridors. And by putting  
20 those allocations, it would finally give the former  
21 Frisco people the opportunity to do that.

22 So I wasn't opposed to the allocations. I  
23 mean, I agreed to them. We agreed to them. We had  
24 that meeting in Oklahoma City that Mr. Wolly mentioned  
25 with all the local chairmen, all carrier officers

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1 conjunction with other articles in the agreement. It  
2 was a complete package, right?

3 A I don't think it was a complete package. If  
4 you really look at that agreement, you have two  
5 articles that address train operation and one that  
6 addresses seniority operation. And the only reason I  
7 put Article 3 in is that as a seniority allocation  
8 matter, it stood outside. It was divisible from. It  
9 was different than the train operation issues. I mean,  
10 if I wanted to take advantage of the situation, I would  
11 have put in Article 2. That's what we wanted. Article  
12 3 I didn't want, but I thought it was probably the  
13 right thing to do.

14 Q In front of the arbitrator, the company took  
15 the position that the entire package should be the  
16 imposed agreement, didn't it?

17 A Yes. The initial agreement should become the  
18 effective agreement.

19 Q And there was definitely a connection between  
20 all of the articles in the implementing agreement  
21 itself. You needed the allocation in order to be able  
22 to do Article 2?

23 A Right.

24 Q In order to accomplish the goals that the  
25 company had going in on Implementing Agreement 17A, you

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1 involved. And we ended up resolving what had been a  
2 thorn both for Rick and for his predecessor for a  
3 decade -- nearly a decade.

4 MR. MUNRO: I have nothing further.

5 MR. WOLLY: I have a follow-up, then.

6 FURTHER EXAMINATION BY COUNSEL FOR THE BROTHERHOOD  
7 OF LOCOMOTIVE ENGINEERS AND TRAINMEN  
8 BY MR. WOLLY:

9 Q So based on what you just testified, you  
10 believed you were rectifying a problem for one of the  
11 union committees, but that actually had an impact on  
12 the people who were represented by the other union  
13 committee, didn't it?

14 A Yes.

15 Q But you didn't obtain the consent of the  
16 other union committee to do that?

17 A We had -- well, first, that resolution had  
18 been agreed to by all concerned, and the agreement was  
19 initialed. Second, we ended up having an arbitration  
20 award that imposed those job allocations. And the only  
21 real question is, was it going to stay on the shelf  
22 until I had the UTU counterpart to 17A -- UTU 17A -- or  
23 could we put it in effectively on an interim basis  
24 pending the rest of the 17A.

25 Q But the award imposed that part in

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1 had to get the consent of the two committees?

2 A Yes.

3 Q And there were various parts -- some things  
4 that the company wanted and some things the company  
5 would have to give up in order to do it?

6 A I didn't see it that way. We had a work  
7 equity dispute, as I am sure Rick would agree, ever  
8 since '97 with the former Frisco people saying  
9 fundamentally that they have been getting savaged ever  
10 since then.

11 Q Okay. But you had the former Sante Fee  
12 people who may not have agreed with that, right?

13 A They were saying for many years, well, we  
14 haven't seen any increase in traffic.

15 Q Right. But I mean, there was -- obviously if  
16 the two committees had been on the same page as to it,  
17 you may never have had to go to arbitration. One of  
18 the committees didn't ratify the agreement, right?

19 A Yes.

20 Q If the agreement had been satisfactory to  
21 that committee, you would have had an agreement without  
22 having to go to arbitration?

23 A I would think so, yes.

24 Q Well, you know so, don't you?

25 A Well, the local chairmen from the Sante Fe

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| <p style="text-align: right;">Page 54</p> <p>1 committees were at that negotiating session and agreed<br/> 2 to the agreement at that point. Then I think later<br/> 3 they had buyer's remorse.<br/> 4 Q In order to operate successfully, the company<br/> 5 has to know how the jobs are going to be allocated on<br/> 6 the particular lines, right?<br/> 7 A Yes.<br/> 8 Q Otherwise, you would have chaos?<br/> 9 A Well, we always ended up having rules saying<br/> 10 who has rights to bid on jobs. Now, whether those get<br/> 11 changed in a particular implementing agreement or not<br/> 12 is obviously a negotiable issue.<br/> 13 Q Right. Sometimes the unions want them<br/> 14 changed and sometimes they don't?<br/> 15 A Correct.<br/> 16 Q And sometimes you are only dealing with one<br/> 17 general committee and others you are dealing with more<br/> 18 than one general committee?<br/> 19 A Yes. Usually in these merger things, there<br/> 20 is usually two.<br/> 21 Q And that's because the general committees<br/> 22 tend to represent former lines that were merged in to<br/> 23 form BNSF?<br/> 24 A That is correct.<br/> 25 Q And whenever you are doing a coordination</p> | <p style="text-align: right;">Page 56</p> <p>1 situation, as we negotiated this or arbitrated it,<br/> 2 where there were two vice presidents, one representing<br/> 3 each committee. There was a single vice president. He<br/> 4 is the vice president who handles BNSF matters largely<br/> 5 for BLET. And if he was representing that the right<br/> 6 thing to do was to put in Article 3, it was something<br/> 7 that I had to give, shall I say, very serious<br/> 8 consideration. And he was weighing in on that side.<br/> 9 MR. MUNRO: I have nothing further.<br/> 10 FURTHER EXAMINATION BY COUNSEL FOR THE BROTHERHOOD<br/> 11 OF LOCOMOTIVE ENGINEERS AND TRAINMEN<br/> 12 BY MR. WOLLY:<br/> 13 Q Did you ask him if Mr. Williams was okay with<br/> 14 what he was suggesting?<br/> 15 A I don't recollect doing that, no.<br/> 16 Q Who is the highest designated officer of the<br/> 17 union on the property?<br/> 18 A I don't believe there is a single one. I<br/> 19 believe it does go by committee.<br/> 20 Q Right. And it's the general chairman of the<br/> 21 particular committee with responsibility for that line,<br/> 22 isn't it?<br/> 23 A I believe so.<br/> 24 Q The vice president is not the highest<br/> 25 designated officer for the union as to any general</p> |
| <p style="text-align: right;">Page 55</p> <p>1 between former lines, your ability to do that<br/> 2 coordination stems from either an ICC or an STB<br/> 3 approval of that transaction?<br/> 4 A That is correct.<br/> 5 Q And those agencies require labor protection,<br/> 6 which involves implementing agreements with the<br/> 7 organizations, right?<br/> 8 A Yes.<br/> 9 MR. WOLLY: That's all I have.<br/> 10 MR. MUNRO: I have one follow-up to that.<br/> 11 FURTHER EXAMINATION BY COUNSEL FOR THE<br/> 12 BNSF RAILWAY COMPANY.<br/> 13 BY MR. MUNRO:<br/> 14 Q Mr. Bell, you testified that you spoke to<br/> 15 both Mr. Gibbons and Mr. Speagle before you issued your<br/> 16 notice on August 12, correct?<br/> 17 A Yes.<br/> 18 Q What's your understanding of where<br/> 19 Mr. Speagle stands in the BLET?<br/> 20 A He is vice president. Vice president is of a<br/> 21 higher rank. As I understand it, the vice presidents<br/> 22 are elected by the general chairman. I don't have<br/> 23 personal knowledge of that. But it has been my<br/> 24 understanding. So the vice presidents do have to be<br/> 25 responsive. On the other hand, this was not a</p>                           | <p style="text-align: right;">Page 57</p> <p>1 committee, is he?<br/> 2 A But as I said, he also --<br/> 3 Q Yes or no?<br/> 4 MR. MUNRO: Well, you have the right to<br/> 5 answer the question.<br/> 6 MR. WOLLY: He can clarify his answer, but<br/> 7 the question calls for a yes or no answer.<br/> 8 BY MR. WOLLY:<br/> 9 Q Is the vice president the highest designated<br/> 10 officer of any general committee of adjustment?<br/> 11 A No. On the other hand, he is a higher<br/> 12 officer. He does, by virtue of that higher position,<br/> 13 carry more weight and authority in the organization and<br/> 14 is someone that you really don't want to get crosswise<br/> 15 with in a way that sometimes we do get crosswise with<br/> 16 the general chairman.<br/> 17 Q Well, the vice president is an officer of the<br/> 18 national union, isn't he?<br/> 19 A Yes.<br/> 20 Q And he has responsibilities that extend far<br/> 21 beyond implementing agreements with the BNSF?<br/> 22 A That is correct.<br/> 23 Q And he did not represent to you that he had<br/> 24 the agreement of Mr. Williams, did he?<br/> 25 A He certainly said nothing to that effect.</p>  |

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| <p>1 Q Okay.</p> <p>2 A On the other hand, he was weighing in on</p> <p>3 saying put in the allocations.</p> <p>4 MR. WOLLY: That's all I have.</p> <p>5 MR. MUNRO: Okay. I think we are done.</p> <p>6 MR. WOLLY: Thank you. I want to ask you</p> <p>7 another question, if you don't mind.</p> <p>8 MR. MUNRO: Let's go back on the record.</p> <p>9 BY MR. WOLLY:</p> <p>10 Q You testified about Article 2 of the</p> <p>11 Implementing Agreement 17A as something that was</p> <p>12 important for the company. Article 2 --</p> <p>13 A That is correct.</p> <p>14 Q Article 2 provided for increased duties and</p> <p>15 responsibilities for Frisco crews, didn't it?</p> <p>16 A Yes.</p> <p>17 Q And --</p> <p>18 A It would have eliminated that thing where the</p> <p>19 Frisco crews were essentially like a track operation or</p> <p>20 a detour operation -- a foreign carrier along the</p> <p>21 corridor. They would have been able to do work.</p> <p>22 Q So a foreign carrier is just given the right</p> <p>23 to run across the line and not do anything else?</p> <p>24 A That is correct.</p> <p>25 Q And insofar as BNSF trains manned by Frisco</p>  | <p>1 Q When you say "they would have now," without</p> <p>2 that in place, they get penalty claims if they have to</p> <p>3 do that work. The company actually strives to avoid</p> <p>4 those situations where it would have to pay penalty</p> <p>5 claims, right?</p> <p>6 A Yes.</p> <p>7 Q And with Article 2 in place, the company</p> <p>8 wouldn't have to strive to avoid that and could have</p> <p>9 those people performing that work with no penalty</p> <p>10 claims?</p> <p>11 A That is correct.</p> <p>12 Q And the more work that can be assigned to a</p> <p>13 crew, the greater the opportunity for the crew to earn</p> <p>14 some more money; isn't that right?</p> <p>15 A Generally, but not necessarily.</p> <p>16 MR. WOLLY: Okay. Thanks.</p> <p>17 THE WITNESS: The --</p> <p>18 MR. MUNRO: Did you have a clarification?</p> <p>19 THE WITNESS: What it really would do would</p> <p>20 be to allow us to put different cars on the trains</p> <p>21 handled by Frisco crews. We could end up having</p> <p>22 Gainesville set-outs as a matter of course as an</p> <p>23 example. We could have set-outs for some other place</p> <p>24 along the route.</p> <p>25 BY MR. WOLLY:</p> |
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| <p>1 crews are concerned when they were going across that</p> <p>2 particular trackage, that's the only right they had,</p> <p>3 also?</p> <p>4 A That is correct.</p> <p>5 Q But Implementing Agreement 17, Article 2</p> <p>6 would change that?</p> <p>7 A That is correct.</p> <p>8 Q And that would be something that the Frisco</p> <p>9 committee would want?</p> <p>10 A Well --</p> <p>11 Q That's what they told you, isn't it?</p> <p>12 A No, they never specifically asked for Article</p> <p>13 2.</p> <p>14 Q But it is beneficial to them to have Article</p> <p>15 2 put in place, isn't it?</p> <p>16 A I don't think so. I mean, as it is right</p> <p>17 now, when we have to have work done out there by those</p> <p>18 trains, they get a penalty claim. What Article 2 would</p> <p>19 do would be to make it kosher for them to do work along</p> <p>20 the line and would, in effect, effectuate the purposes</p> <p>21 of the merger. We would have an integrated operation</p> <p>22 along the line, but the Frisco crews wouldn't have the</p> <p>23 penalty claims anymore and would be doing more work.</p> <p>24 Well, if you took a poll, I am not so sure where the</p> <p>25 members would come down on it.</p> | <p>1 Q I mean, there would be benefit flowing both</p> <p>2 ways is really what you are saying?</p> <p>3 A It would give us more flexibility in what</p> <p>4 trains could handle certain traffic.</p> <p>5 Q Right. And it would open up more work</p> <p>6 opportunities for these crews?</p> <p>7 A Yes.</p> <p>8 MR. WOLLY: Okay. Thank you.</p> <p>9 (At 11:35 a.m., the deposition was</p> <p>10 concluded.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  |

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## AFFIDAVIT OF DEPONENT

I have read the foregoing deposition, which contains a correct transcription of the answers given by me to the questions therein recorded, except as to errors which may be indicated on any attached errata sheet.

\_\_\_\_\_  
WENDELL BELL

Subscribed and sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_.

Notary Public

My Commission Expires:

\_\_\_\_\_, 20\_\_\_\_

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3

ARBITRATION COMMITTEE ESTABLISHED  
PURSUANT TO ARTICLE I, SECTION 4,  
OF THE NEW YORK DOCK PROTECTIVE CONDITIONS

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

QUESTION AT ISSUE

What should be the Implementing Agreement for revised  
operations in the Black Bear/Perry, Oklahoma to Fort  
Worth, Texas corridor?

ARBITRATION COMMITTEE

Robert M. O'Brien - Chairman and Neutral Member  
Stephen Speagle - Employee Member  
Wendell Bell - Carrier Member

BACKGROUND

On August 23, 1995, the Interstate Commerce Commission (ICC) approved the merger of the Santa Fe Railway Company (Santa Fe) and the Burlington Northern Railroad Company (Burlington Northern) into the Burlington Northern and Santa Fe Railway Company (BNSF or the Carrier). The ICC imposed the New York Dock Labor Protective Conditions on the merger.

In accordance with the New York Dock Conditions, the Carrier and the Brotherhood of Locomotive Engineers (hereinafter referred to as the BLE or the

Organization) negotiated an implementing agreement to consolidate the two former railroads. That agreement, dated March 1, 1996, is referred to as Implementing Agreement No. 1.

After the merger of the Burlington Northern and the Santa Fe in 1995, the Carrier had two routes between Kansas City and Fort Worth, Texas. The erstwhile St. Louis-San Francisco Railway Company (Frisco) route operated through Tulsa and Madill, Oklahoma to Irving, Texas then over to Fort Worth. The second route operated between Arkansas City, Kansas through Oklahoma City, Oklahoma and Gainesville, Texas to Fort Worth. This was former Santa Fe territory.

In 1994, the Frisco route handled 10 trains a day between Kansas City and Fort Worth and the Santa Fe route handled 16 trains a day. For a myriad of reasons, the Santa Fe route was more direct than the Frisco route. In 1996, the Carrier served two notices pursuant to Implementing Agreement No. 1 to reroute traffic from the Frisco route to the Santa Fe route. In 1998, the Carrier served two additional notices to divert traffic from the Frisco route to the Santa Fe route due to the sale of track between Tulsa and Oklahoma City as well as changes between Irving and Fort Worth, Texas. The latter territory was sold to the Dallas and Fort Worth Transit authorities, which began commuter service, Trinity Rail Express, between the two cities.

In the spring of 1998, the Carrier served notice under Merger Implementing Agreement No. 1 and the New York Dock Conditions to divert trains operating from Tulsa and Galveston and Tulsa and Eagle Pass on the Frisco route to the Santa Fe route. After difficult negotiations, the BLE and the BNSF reached Implementing Agreement No. 17 which addressed the diversion of these trains from the former Frisco's Tulsa-

Madill-Fort Worth corridor to the former Frisco and Santa Fe's Tulsa-Black Bear-Oklahoma City-Fort Worth corridor.

The new operation began on May 3, 2000. Two significant restrictions in Implementing Agreement No. 17 and side letters thereto proved unworkable for the Carrier. Firstly, the new Frisco pools were restricted to specific train symbols. And secondly, no intermediate work of any kind could be required of the Fort Worth pool except setting out bad order cars from their trains.

In an attempt to eliminate these two impediments in Implementing Agreement No. 17 as well as making preparations to darken the signal system on the Tulsa-Madill corridor, on December 19, 2002, the Carrier served a notice in accordance with Implementing Agreement No. 1 to divert additional trains from the Frisco route between Kansas City and Fort Worth to the Santa Fe corridor. The Carrier contemplated that the diverted trains would be handled by the existing Fort Worth-Oklahoma City and Oklahoma City-Tulsa pools.

The parties were unable to reach a resolution to amend Implementing Agreement No. 17. Therefore, on May 2, 2003, the Carrier served a notice under Section 4 of the New York Dock Conditions to amend Merger Implementing Agreement No. 17. The parties met on June 10 and 11, 2003, to discuss the Carrier's proposal to amend Implementing Agreement No. 17. On June 11, 2003, the BLE Frisco Committee, the BLE Santa Fe Committee and the Carrier reached a tentative agreement. All parties initialed the tentative agreement. It was entitled BNSF Merger Implementing Agreement No. 17A.

The preamble to the tentative agreement stated that it was intended to remedy the operational difficulties and train-symbol specific seniority limitations that arose from Implementing Agreement No. 17. The tentative agreement was also intended to govern subsequent diversions of trains from the former Frisco's Tulsa-Madill-Fort Worth corridor to the Tulsa-Black Bear/Perry-Oklahoma City-Fort Worth corridor.

Among other things, the tentative agreement defined pool activity by destination pairs rather than by train symbol. It also allowed crews to perform necessary work en route. Additionally, it provided that all trains moving between Tulsa and Fort Worth would be handled by former Frisco pools; and all trains moving between Arkansas City, Kansas and Fort Worth would be handled by former Santa Fe pools. The agreement also allocated turns between the Frisco and Santa Fe pools.

The BLE Frisco Committee ratified the tentative agreement but the BLE Santa Fe Committee did not ratify it. Accordingly, the matter was referred to this Arbitration Board (hereinafter referred to as the Board) in accordance with the New York Dock Conditions. The Board convened in Fort Worth, Texas on March 10, 2004. Based on the evidence and arguments submitted by the Organization and the Carrier at that hearing, this Board hereby renders the following decision.

#### **FINDINGS AND OPINION**

It is difficult for this Board to understand why Implementing Agreement No. 17A was not ratified by the BLE Santa Fe Committee. The tentative agreement that was reached on June 11, 2003, diverted trains from the Frisco Tulsa-Madill-Fort Worth route to the Santa Fe Tulsa-Black Bear/Perry-Oklahoma City-Fort Worth corridor thereby increasing work opportunities for Santa Fe pools. Representatives of the former Santa Fe

Committee initialed the final draft of the tentative agreement thereby acknowledging that the terms and conditions of the agreement were fair and reasonable for its members. For these reasons, we find that the Organization's objection to the tentative agreement is genuine but misplaced.

The Organization is concerned that former Santa Fe Engineers will not be afforded any of the work between Oklahoma City and Tulsa even though this is considered "new work" under the tentative agreement. The Organization erroneously concluded that former Santa Fe Engineers will have no work equity on the Oklahoma City-Tulsa territory. Section 2B. of the tentative agreement expressly provides that:


*"If an allocated position goes no bid by people with prior rights to that allocation, the senior bidder without the applicable prior rights will be awarded the position. . . ."*


Thus, if an allocated position at Oklahoma City goes no bid by a prior rights Locomotive Engineer, the senior bidder without prior rights will be awarded the position regardless whether he/she is a former Santa Fe or former Frisco employee. Therefore, contrary to the Organization's belief, former Santa Fe Engineers do have a claim to work on the Oklahoma City-Tulsa territory.


For all the foregoing reasons, this Board finds proposed Implementing Agreement No. 17A fair and reasonable to former Santa Fe Engineers, former Frisco Engineers as well as to the Burlington Northern and Santa Fe Railway Company. Therefore, this Board adopts that Implementing Agreement, which is incorporated herein and appended to this Award.

AWARD

BNSF Merger Implementing Agreement No. 17A is adopted for revised operations in the Black Bear/Perry, Oklahoma to Fort Worth, Texas corridor. That Implementing Agreement is appended hereto and incorporated into this Award.

  
Robert M. O'Brien, Chairman and Neutral Member

  
Wendell Bell, Carrier Member

  
Stephen Speagle, Employee Member

Dated: 6/11/04

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Page 1

1                   BEFORE THE SURFACE TRANSPORTATION BOARD

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4 In the Matter of:

5 STB [I.C.C.] Finance Docket No. 32549

7 BURLINGTON NORTHERN, INC. - CONTROL AND :

8 MERGER - SANTA FE PAC. CORP. & ATCHISON,:

9 TOPEKA & SANTA FE RY. CO.

10 - - - - - X

11 Washington, D.C.

12 Wednesday, January 18, 2006

13

Deposition of RICHARD C. GIBBONS, called for examination by counsel for the BNSF Railway Company in the above-entitled matter, pursuant to notice, the witness being duly sworn by CARLA L. ANDREWS, a Notary Public in and for the District of Columbia taken at the offices of Goodwin, Procter, LLP, 901 New York Avenue, N.W., Washington, D.C. 20001, at 11:43 a.m., Wednesday, January 18, 2006, and the proceedings being taken down by Stenotype by CARLA L. ANDREWS and transcribed under her direction.

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25

| Page 2  | Page 4  |
|---|---|
| <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the BNSF Railway Company:</p> <p>4 DONALD J. MUNRO, ESQ:</p> <p>5 Goodwin, Procter, LLP</p> <p>6 901 New York Avenue, N.W.</p> <p>7 Washington, D.C. 20001</p> <p>8 (202) 346-4000</p> <p>9</p> <p>10 On behalf of the Brotherhood of Locomotive Engineers</p> <p>11 and Trainmen:</p> <p>12 MICHAEL S. WOLLY, ESQ.</p> <p>13 Zwerdling, Paul, Kahn &amp; Wolly, P.C.</p> <p>14 1025 Connecticut Avenue, N.W.</p> <p>15 Suite 712</p> <p>16 Washington, D.C. 20036-5420</p> <p>17 (202) 857-5000</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 WENDELL BELL</p> <p>21 PATRICK J. WILLIAMS</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  | <p>1 P-R-O-C-E-E-D-I-N-G-S</p> <p>2 Thereupon,</p> <p>3 RICHARD C. GIBBONS</p> <p>4 was called as a witness and, after being duly sworn by</p> <p>5 the notary, was examined and testified as follows:</p> <p>6 EXAMINATION BY COUNSEL FOR THE</p> <p>7 BNSF RAILWAY COMPANY</p> <p>8 BY MR. MUNRO:</p> <p>9 Q Could you state your name for the record,</p> <p>10 please?</p> <p>11 A Richard C. Gibbons.</p> <p>12 Q And, Mr. Gibbons, would you tell us who you</p> <p>13 are employed by?</p> <p>14 A The Brotherhood of Locomotive Engineers and</p> <p>15 Trainmen.</p> <p>16 Q And what is your position?</p> <p>17 A General chairman.</p> <p>18 Q Is there a specific committee designation?</p> <p>19 A It is the former SLSF or formerly known as</p> <p>20 Frisco General Committee.</p> <p>21 Q How long have you been in that position?</p> <p>22 A Since May of 2001.</p> <p>23 Q Have you been deposed before, Mr. Gibbons?</p> <p>24 A Yes.</p> <p>25 Q Okay. Well, I will just give you a very</p>  |
| Page 3  | Page 5  |
| <p>1 C-O-N-T-E-N-T-S</p> <p>2 WITNESS EXAMINATION BY COUNSEL FOR</p> <p>3 RICHARD C. GIBBONS BNSF RAILWAY COMPANY</p> <p>4 By Mr. Munro 4, 77</p> <p>5 EXAMINATION BY COUNSEL FOR</p> <p>6 THE INTERNATIONAL BROTHERHOOD</p> <p>7 OF TEAMSTERS</p> <p>8 By Mr. Wolly 74</p> <p>9</p> <p>10 E-X-H-I-B-I-T-S</p> <p>11 NO. IDENT.</p> <p>12 Exhibit No. 11..... 5</p> <p>13 Exhibit No. 12..... 9</p> <p>14 Exhibit No. 13..... 11</p> <p>15 Exhibit No. 14..... 41</p> <p>16 Exhibit No. 15..... 44</p> <p>17 Exhibit No. 16..... 45</p> <p>18 Exhibit No. 17..... 49</p> <p>19 Exhibit No. 18..... 51</p> <p>20 Exhibit No. 19..... 53</p> <p>21 Exhibit No. 20..... 56</p> <p>22 Exhibit No. 21..... 67</p> <p>23 Exhibit No. 22..... 69</p> <p>24</p> <p>25</p> | <p>1 short summary, then, of the rules. I will ask you</p> <p>2 questions; you give me your answers. If you need to</p> <p>3 take a break, just let me know. If there is something</p> <p>4 I say that is unclear, just let me know and I will</p> <p>5 rephrase it.</p> <p>6 You understand all of that?</p> <p>7 A Yes.</p> <p>8 Q And is there any medication you are on today</p> <p>9 that would in any way inhibit your ability to give</p> <p>10 truthful answers?</p> <p>11 A No.</p> <p>12 Q Are you familiar with Implementing Agreements</p> <p>13 17A?</p> <p>14 A Yes.</p> <p>15 Q I am going to show you a copy of a document</p> <p>16 that was attached to the BLET petition in this case.</p> <p>17 And I guess we should mark this as Exhibit 11.</p> <p>18 (Exhibit No. 11, marked for identification.)</p> <p>19 BY MR. MUNRO:</p> <p>20 Q I ask you to just take a look at that, sir.</p> <p>21 And once you are ready, let me know.</p> <p>22 A Yes.</p> <p>23 Q Do you recognize that document?</p> <p>24 MR. WOLLY: Can we stipulate that Deposition</p> <p>25 Exhibit 11 is identical to Petition Exhibit B?</p> |

| Page 6  | Page 8  |
|---|---|
| <p>1 MR. MUNRO: Yes.</p> <p>2 BY MR. MUNRO:</p> <p>3 Q I am sorry. I may have misspoke earlier in</p> <p>4 identifying this Petition Exhibit A. It is actually</p> <p>5 Petition Exhibit B. This is, in fact, the arbitration</p> <p>6 award and attached copy of Implementing Agreement 17A,</p> <p>7 correct?</p> <p>8 A As I see it, yes.</p> <p>9 Q Were you involved in the collective</p> <p>10 bargaining that led to what is currently the text of</p> <p>11 Implementing Agreement 17A?</p> <p>12 A Yes.</p> <p>13 Q And so you are familiar with the terms of</p> <p>14 that agreement?</p> <p>15 A Yes.</p> <p>16 Q I am going to direct your attention to what</p> <p>17 is now page four of the Implementing Agreement itself.</p> <p>18 So if you flip past the award and then go to the</p> <p>19 agreement, I would like to direct your attention to the</p> <p>20 language in Section 3 there in the middle of the page.</p> <p>21 Do you see that?</p> <p>22 A Yes.</p> <p>23 Q And this states that this agreement will</p> <p>24 become effective upon five days written notice from the</p> <p>25 carrier after execution by the parties. Do you see</p> | <p>1 clock outside the confines of the bargaining of this</p> <p>2 agreement?</p> <p>3 A No, we didn't discuss the 30-day clock.</p> <p>4 Q What's your understanding of why this</p> <p>5 language is in the agreement? In other words, why does</p> <p>6 it say the agreement becomes effective upon five days</p> <p>7 written notice? Why doesn't it just say that the</p> <p>8 agreement becomes effective after execution?</p> <p>9 A It is my assumption that the five days</p> <p>10 written notice allows the carrier to make</p> <p>11 administrative changes to get things in order to</p> <p>12 comply. I understand that for the most part these</p> <p>13 things can't be done with the swipe of a pen on a piece</p> <p>14 of paper.</p> <p>15 Q When you say administrative changes, what do</p> <p>16 you have in mind?</p> <p>17 A There are numerous departments within the</p> <p>18 carrier that have to be notified. Changes have to be</p> <p>19 made in computer software sometimes. There's what I</p> <p>20 recognize from my advantage point, there needs to be</p> <p>21 some kind of lead time to be able to effectuate the</p> <p>22 change.</p> <p>23 Q At the time that this agreement language was</p> <p>24 negotiated, had you been told by anyone that the reason</p> <p>25 for this language was to give the carrier time to reach</p> |
| Page 7  | Page 9  |
| <p>1 that?</p> <p>2 A Yes.</p> <p>3 Q What is your understanding of what that</p> <p>4 means?</p> <p>5 A That BNSF would serve written notice to the</p> <p>6 involved parties that the agreement would be</p> <p>7 implemented or the award and agreement -- and attached</p> <p>8 agreement would be implemented.</p> <p>9 Q Is it your understanding that this language</p> <p>10 obligates BNSF to serve that notice at any particular</p> <p>11 time?</p> <p>12 A Yes, that's my impression.</p> <p>13 Q And at what time did you understand that BNSF</p> <p>14 would be obligated to serve the notice?</p> <p>15 A That was unclear to me.</p> <p>16 Q What's the source of your understanding that</p> <p>17 there was a particular time that the carrier was</p> <p>18 obligated to serve the notice?</p> <p>19 A I understood by way of a BLET officer that</p> <p>20 there should be a 30-day clock involved, but I did no</p> <p>21 research. It was just in their conversation.</p> <p>22 Q Did you talk about that 30-day clock in the</p> <p>23 bargaining of this agreement?</p> <p>24 A No.</p> <p>25 Q Did you talk to Mr. Bell about the 30-day</p>        | <p>1 parallel implementing agreements with the UTU?</p> <p>2 A I was never told that Section 3 was to</p> <p>3 provide for those changes.</p> <p>4 Q Did you have any understanding that it might</p> <p>5 be used for that purpose?</p> <p>6 A I never correlated the two.</p> <p>7 Q Did you in the negotiation of this language</p> <p>8 advocate for any alternative language with respect to</p> <p>9 Section 3?</p> <p>10 A No.</p> <p>11 Q Are you familiar with alternative ways of</p> <p>12 drafting the kind of language that is provided in</p> <p>13 Section 3? In other words --</p> <p>14 A To some degree.</p> <p>15 MR. MUNRO: Let's mark this as Exhibit 12.</p> <p>16 (Exhibit No. 12, marked for identification.)</p> <p>17 BY MR. MUNRO:</p> <p>18 Q Mr. Gibbons, if you could just take a look at</p> <p>19 this and then let me know when you are ready.</p> <p>20 A Ready.</p> <p>21 Q Can you identify this document?</p> <p>22 A Implementing Agreement No. 1.</p> <p>23 Q Have you seen this before?</p> <p>24 A Yes.</p> <p>25 Q You are familiar with it?</p>  |

3 (Pages 6 to 9)

| Page 10   | Page 12   |
|---|---|
| <p>1 A Yes.</p> <p>2 Q Can you turn to what's page five of the</p> <p>3 agreement. ENSF 137 is the number at the bottom. And</p> <p>4 look at the language there in Section 6, the language</p> <p>5 that states, This agreement will become effective when</p> <p>6 it is executed by the parties.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Is this language formulation something that</p> <p>10 you have seen before when you were negotiating 17A?</p> <p>11 A I had seen this before, yes.</p> <p>12 Q And why did you not insist on this</p> <p>13 formulation in 17A?</p> <p>14 A I didn't feel I was compelled to do so.</p> <p>15 Q You didn't see a need for it?</p> <p>16 A Not at that time, no.</p> <p>17 Q Referring back to Section 3 of 17A, where did</p> <p>18 that language come from to the best of your</p> <p>19 recollection? Who proposed it?</p> <p>20 A The draft was prepared by, to the best of my</p> <p>21 knowledge, Wendell Bell and his staff -- and/or his</p> <p>22 staff.</p> <p>23 Q And specifically with respect to the</p> <p>24 provision for becoming effective on five days notice</p> <p>25 from the carrier as distinguished from what we just</p> | <p>1 Q Isn't it true in your experience that this</p> <p>2 sort of formulation of the provision for becoming</p> <p>3 effective on notice from the carrier was common in</p> <p>4 agreements with the union?</p> <p>5 A I don't think it is common throughout the</p> <p>6 agreements.</p> <p>7 Q How about common within implementing</p> <p>8 agreements?</p> <p>9 A It would be my best guess there is some form</p> <p>10 of acknowledgment. I can't speak to all the</p> <p>11 implementing agreements.</p> <p>12 Q Isn't it true that the carrier routinely</p> <p>13 waits for some period of time before it implements an</p> <p>14 implementing agreement with the BLE, excuse me, BLET?</p> <p>15 A Routinely is generalizing. I can't really</p> <p>16 speak to that. But as I testified earlier, I realize</p> <p>17 the fact that you can't sign this at noon today and</p> <p>18 ensure that it is effective at noon today in all</p> <p>19 phases.</p> <p>20 Q So you are familiar with the fact that there</p> <p>21 often is a period of delay?</p> <p>22 A Yes.</p> <p>23 Q Have you ever been in a dispute, other than</p> <p>24 this one, with the carrier about delayed implementation</p> <p>25 of an agreement?</p>  |
| Page 11   | Page 13   |
| <p>1 looked at in Implementing Agreement 1, have you seen</p> <p>2 that sort of language in other agreements, the five-day</p> <p>3 notice provision?</p> <p>4 A Specifically I can't recall.</p> <p>5 Q Let me show you another exhibit.</p> <p>6 (Exhibit No. 13, marked for identification.)</p> <p>7 BY MR. MUNRO:</p> <p>8 Q And, again, sir, if you would just look this</p> <p>9 over and tell me when you are ready.</p> <p>10 A Ready.</p> <p>11 Q And could you identify this document for us?</p> <p>12 A BNSF Merger Implementing Agreement 17.</p> <p>13 Q Okay. And I will stipulate for the record</p> <p>14 that this is the same document as Petition Exhibit A.</p> <p>15 Are you familiar with this document?</p> <p>16 A Yes.</p> <p>17 Q Again, let me direct your attention to</p> <p>18 particular language on page five, Article 5, Section 3</p> <p>19 towards the bottom of the page. Do you see the</p> <p>20 language there that contains the five days written</p> <p>21 notice provision?</p> <p>22 A Yes.</p> <p>23 Q Had you seen that language at the time that</p> <p>24 you negotiated 17A?</p> <p>25 A Yes.</p>   | <p>1 A Not an implementing agreement.</p> <p>2 Q How about some other kind of agreement?</p> <p>3 A Yes.</p> <p>4 Q Could you describe the circumstances of that?</p> <p>5 A We have on the table at this time an</p> <p>6 agreement that addresses several issues. It is written</p> <p>7 in the form of a settlement, which in my world is an</p> <p>8 agreement. And we were given assurances that we could</p> <p>9 move extra work from pool service to the extra board.</p> <p>10 And as of this date, we have been denied to some</p> <p>11 degree. That's the example that comes to mind.</p> <p>12 Q And what is the carrier's position in that</p> <p>13 situation? Are they saying that they don't have to do</p> <p>14 it, or are they saying that they will do it, they just</p> <p>15 don't have to do it now?</p> <p>16 A There is -- I am getting mixed signals. The</p> <p>17 Labor Relations Department says, yes, and the Operating</p> <p>18 Department says, no.</p> <p>19 Q Does that agreement or settlement have a name</p> <p>20 or is there some sort of label that you put on that?</p> <p>21 A Short Turnaround Service Understanding.</p> <p>22 Q We earlier introduced into the record a copy</p> <p>23 of what's labelled BNSF Implementing Agreement 11,</p> <p>24 which is Exhibit 10. I would like you to take a look</p> <p>25 at that and tell me when you are ready.</p> |

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| <p style="text-align: right;">Page 14</p> <p>1 A To the best of my recollection, I have never<br/>2 seen any part of it, except for the fact the<br/>3 possibility of some national language extracted --<br/>4 boilerplate language. But other than that, I have<br/>5 never seen it.</p> <p>6 Q You didn't have any involvement with<br/>7 Implementing Agreement No. 11?</p> <p>8 A It has nothing do with the jurisdiction of<br/>9 our committee.</p> <p>10 Q Had you ever discussed Implementing Agreement<br/>11 11 with any of your colleagues within the union?</p> <p>12 A Not before yesterday.</p> <p>13 Q Did those conversations yesterday take place<br/>14 in the presence of counsel?</p> <p>15 A Yes. I do want to clarify that. I was told<br/>16 about the implementing agreement. I never discussed<br/>17 the implementing agreement in detail with anyone.</p> <p>18 Q Regardless of whether you discussed it in<br/>19 detail with anyone, did you ever hear anyone talk about<br/>20 the fact that it hadn't been put into place?</p> <p>21 A No.</p> <p>22 Q Have you ever talked to anyone about the<br/>23 language in the agreement that either obligated or<br/>24 didn't obligate the carrier to implement that<br/>25 agreement?</p> | <p style="text-align: right;">Page 16</p> <p>1 A Correct, and subsequent to partial<br/>2 implementation.</p> <p>3 Q Let's refer back again to that exhibit, 17A,<br/>4 which is No. 11, I believe. Okay. What I would like<br/>5 you to do, Mr. Gibbons, is point me to any language in<br/>6 the agreement that you believe obligates the carrier to<br/>7 implement it, as you have argued?</p> <p>8 A Well, it was my position that the<br/>9 implementing agreement is attached to the award in<br/>10 which Neutral O'Brien supported that implementation.<br/>11 To direct your question, it was my position that<br/>12 Section 3 language, we would receive notice -- five<br/>13 days written notice for the entire implementing<br/>14 agreement and award.</p> <p>15 Q Okay. Let me see if I can clarify my<br/>16 question. What is it in the agreement that you believe<br/>17 obligates the carrier to send that notice at any<br/>18 particular time? If there is nothing in the agreement,<br/>19 you can say that. I am asking you what you point to as<br/>20 the basis for that obligation.</p> <p>21 A I see nothing in the agreement that<br/>22 specifically says on what day they will serve that<br/>23 notice.</p> <p>24 Q Do you understand why the carrier has not<br/>25 implemented -- not fully implemented 17A?</p> |
| <p style="text-align: right;">Page 15</p> <p>1 A Other than it was brought to counsel, I am<br/>2 oblivious to it.</p> <p>3 Q Let me just say. I don't want you to talk<br/>4 about anything that you have discussed with your<br/>5 counsel.</p> <p>6 A I understand.</p> <p>7 Q Mr. Gibbons, you are familiar with the fact,<br/>8 as Mr. Bell testified earlier, that the carrier<br/>9 partially implemented Agreement 17A, correct?</p> <p>10 A Yes.</p> <p>11 Q If the carrier hadn't done that, what would<br/>12 be your position with respect to its obligations to<br/>13 implement 17A?</p> <p>14 A My position has never changed from the day we<br/>15 signed the award inasmuch as I have pushed for full<br/>16 implementation.</p> <p>17 Q I understand that's what you want. Is it<br/>18 your position that the carrier is obligated by the<br/>19 terms of the agreement, again, leaving aside the<br/>20 partial implementation obligated by the terms of the<br/>21 agreement to implement immediately?</p> <p>22 A Yes, to the best of my knowledge, which I<br/>23 attempted to support in correspondence.</p> <p>24 Q Was that the correspondence back in 2004<br/>25 after the agreement was signed but not implemented?</p>                | <p style="text-align: right;">Page 17</p> <p>1 A I have tried to. I don't.</p> <p>2 Q What is your understanding of the carrier's<br/>3 reasons as best you can articulate?</p> <p>4 A When this whole project evolved and<br/>5 subsequent to the opinion given by Neutral O'Brien, we<br/>6 were given assurances that the BNSF would meet with the<br/>7 UTU to either get a similar, if not identical,<br/>8 agreement ratified. If not, it would be hopefully<br/>9 imposed through arbitration. Subsequent to that, there<br/>10 was activity across the hall, if you will, with another<br/>11 general director that was making arrangements or<br/>12 attempted to do something similar to this same<br/>13 corridor.</p> <p>14 Q So you understood that the carrier's reasons<br/>15 for not implementing 17A had to do -- at least as they<br/>16 had said to you, their reasons had to do with the need<br/>17 to get parallel agreements with UTU; is that correct?</p> <p>18 A Yes.</p> <p>19 Q Has this ever in your experience happened<br/>20 before where the carrier is trying to get parallel<br/>21 agreements with both unions?</p> <p>22 A As far as my personal experience, I can't<br/>23 recall right now. But I have heard tale.</p> <p>24 Q You have heard it said within your<br/>25 experience?</p>                    |

5 (Pages 14 to 17)

| Page 18  | Page 20  |
|--|--|
| <p>1 A Dealings.</p> <p>2 Q Do you perceive any practical problem for the</p> <p>3 carrier if it implemented all of 17A prior to having a</p> <p>4 matching agreement with UTU?</p> <p>5 A No.</p> <p>6 Q Do you agree that it would -- if they did</p> <p>7 that, that there would be different crew change points</p> <p>8 for UTU personnel and personnel?</p> <p>9 A Not to the extent they would testify.</p> <p>10 Q You agree there would be some different crew</p> <p>11 change plans?</p> <p>12 A One for one crew member. Could I expand on</p> <p>13 that?</p> <p>14 Q Yes, please.</p> <p>15 A Which, to me, is stopping the train and one</p> <p>16 dismounting and one mounting at Gainesville.</p> <p>17 Q Have you ever served in operations on a</p> <p>18 locomotive as either a conductor or a locomotive?</p> <p>19 A Locomotive engineer for 32 years.</p> <p>20 Q In your experience as a locomotive engineer,</p> <p>21 how long does it take generally to conduct a crew</p> <p>22 change?</p> <p>23 A I mean, it would vary. But in practicality's</p> <p>24 sake, reducing speed and stopping and starting again</p> <p>25 could amount to 15 minutes.</p>  | <p>1 would be Ark City or goes partially the Kansas City.</p> <p>2 On the Red Rock, that's what I see under the Sante Fe</p> <p>3 committee's. And I don't think I am overlooking</p> <p>4 anything. It is not under my jurisdiction as far as</p> <p>5 scheduling goes.</p> <p>6 Q I understand that. So there is four spots</p> <p>7 currently where they change crews?</p> <p>8 A Oklahoma City would not be a crew change</p> <p>9 point other than the possibility of trains originating</p> <p>10 there or that being their ultimate destination. So</p> <p>11 crew change point, I guess, where you are changing out</p> <p>12 crews, Oklahoma City would not apply on the Sante Fe.</p> <p>13 It would apply for Frisco crews.</p> <p>14 Q So with that caveat, there is four?</p> <p>15 A Yes.</p> <p>16 Q Okay.</p> <p>17 A With the distinction of traffic going in</p> <p>18 different directions.</p> <p>19 Q Understood. If 17A were fully implemented</p> <p>20 where, in addition to those four spots, might trains</p> <p>21 stop for crew changes?</p> <p>22 A Nowhere that I am aware of.</p> <p>23 Q And how would it be that within those four</p> <p>24 locations that a carrier could conduct operations</p> <p>25 without making an additional stop? Again, we are</p>   |
| Page 19  | Page 21  |
| <p>1 Q In the real world, does that ever happen? In</p> <p>2 other words --</p> <p>3 A Absolutely.</p> <p>4 Q Isn't it true that it can take as long as 45</p> <p>5 minutes to do a crew change?</p> <p>6 A If something else impacted it, I would assume</p> <p>7 that, yes.</p> <p>8 Q So, for example, if you had to wait to pull</p> <p>9 into a yard or someone, you know, hadn't arrived yet</p> <p>10 and they were late getting to the terminal or something</p> <p>11 like that, that could add additional time to the crew</p> <p>12 change?</p> <p>13 A It could if we talk in general terms. To the</p> <p>14 specific locations involved in 17A in Gainesville, more</p> <p>15 specifically, it is a crew change point, anyway, with</p> <p>16 not a big yard and not multiple tracks. I think there</p> <p>17 is one median point there.</p> <p>18 Q At present where do the trains stop on the</p> <p>19 Red Rock?</p> <p>20 A We are talking in generalities. Trains stop</p> <p>21 everywhere.</p> <p>22 Q For crew changes?</p> <p>23 A For crew changes? It could be a lines yard</p> <p>24 outside of Fort Worth, Texas; Gainesville; Oklahoma</p> <p>25 City. And the Red Rock goes to Kansas City, so it</p> | <p>1 presuming full implementation of 17A.</p> <p>2 A The difference in this would not necessarily</p> <p>3 be the full crew change point. If the trainman or</p> <p>4 conductor where a crew change point was still at</p> <p>5 Gainesville, that train would traverse to Oklahoma City</p> <p>6 where the full crew would be changed to go to Tulsa.</p> <p>7 The Implementing Agreement implies Black Bear. But for</p> <p>8 quite some time, crews had not gone by contract vehicle</p> <p>9 or taxicab to Black Bear to change. They have done it</p> <p>10 at Oklahoma City. And then the former Sante Fe crews</p> <p>11 are taken either to Gainesville back to Gainesville or</p> <p>12 on to Ark City.</p> <p>13 Q Are you suggesting that although there is a</p> <p>14 contractual provision for partial crew changes in Black</p> <p>15 Bear, that that's not done in practice?</p> <p>16 A It is not done in practice by local</p> <p>17 arrangement inasmuch as it is saving the carrier great</p> <p>18 expense in contract vehicles, taxi service, all of the</p> <p>19 above, plus the time savings in changing crews at Black</p> <p>20 Bear. Oklahoma City is a terminal. And the crews</p> <p>21 change there to some degree, anyway, or set out and</p> <p>22 pick up cars at that location, anyway, so they are</p> <p>23 stopped. So that's the difference there.</p> <p>24 In answer to your question, the agreement</p> <p>25 implies the crews will take it to Black Bear. We</p> |

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1 discovered that it was a great hinderance to both our  
2 crews and the carriers. And by local arrangements,  
3 that was moved back to Oklahoma City.

4 Q Is that by informal arrangement or is that  
5 documented in any way?

6 A I will have to defer to BNSF. I don't know  
7 that this office has any documentation, but we do not  
8 handle grievances with regard to that.

9 Q Okay. Are you aware of any points on the  
10 system -- on the BNSF system where crew changes for  
11 BLET and UTU don't line up?

12 A The only thing that I am aware of is through  
13 conversation. And I believe on the same corridor --  
14 once again, I will defer to the Sante Fe Committee and  
15 BNSF -- that there were situations where I believe it  
16 was locals or road switchers were not patterned for the  
17 ground crew and the engine crew where they did have to  
18 make changes. And all I have to go on is purely  
19 conversation. I don't have any documentation to  
20 support that.

21 Q It is true, is it not, that the vast majority  
22 of crew changes involve both ground and engine  
23 personnel?

24 A That's correct. But with the understanding  
25 that the engine crew and the train crew are not married

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1 by agreement inasmuch as in the example of Mr. Munro  
2 and Mr. Gibbons being on the same crew that we have to  
3 do everything identical. There are no agreements that  
4 apply.

5 Q There is no agreement that says that you and  
6 the ground service personnel have to get off at the  
7 same point. It is just that there are parallel  
8 agreements that provide for each of you that it will be  
9 at the same place; is that correct?

10 A Yes. And I can't speak to the whole system,  
11 though.

12 Q I understand.

13 A I don't know if it happens anywhere else in  
14 answer to your question.

15 Q If I understand you, then, you admit that the  
16 current, full implementation of 17A would generate at  
17 least one additional crew change for the carrier on the  
18 Red Rock; is that right?

19 A I don't think I agree with that.

20 Q Okay. What aspect of that is correct?

21 A I think that one crew member would be changed  
22 out.

23 Q Okay. The train would have to stop one  
24 additional time, right.

25 A With a pattern agreement with UTU, that would

Page 24

1 subsequently dismiss one of those crew change points.  
2 In my perception, it would not increase by virtue of  
3 implementing the BLET agreement.

4 Q I am sorry. I am not sure I follow that. So  
5 let's say 17A is implemented tomorrow?

6 A Yes.

7 Q There is still no parallel agreement for UTU?

8 A That's correct.

9 Q During that period until the UTU agreement is  
10 finalized, the trains would be stopping one additional  
11 time?

12 A Not in addition to what they are doing now.

13 This is my perception. And unless I am missing  
14 something, the trains now leave Alliance Yard, go to  
15 Gainesville and change crews, go to Oklahoma City and  
16 change crews to go to Tulsa by virtue of the  
17 arrangement to not get off at Black Bear. If the BLET  
18 agreement is implemented today, nothing would change  
19 other than the carrier would save the cost of one of  
20 those engineers on the leg from Gainesville to Oklahoma  
21 City. They would realize a savings in that. The  
22 engineers under the BLET 17A would run from Fort Worth  
23 to Oklahoma City. The train crew would change out at  
24 Gainesville; nobody else. You still have to stop there  
25 today.

Page 25

1 Q Okay. Well, maybe we will come back to  
2 this. Let me go on to related subjects. Have you  
3 witnessed recently a migration of traffic back from the  
4 Red Rock to the Madill line?

5 A Yes.

6 Q Do you understand why that has been  
7 occurring?

8 A Several reasons from my understanding.

9 Q What are those reasons as you understand  
10 them?

11 A Capacity issues. The recent hurricanes had  
12 an influx of other than BNSF traffic, trackage work,  
13 maintenance work projects. We have seen for quite some  
14 time decisions made on almost a daily basis of where  
15 these trains were run, which motivated both this  
16 organization and Wendell Bell representing BNSF to try  
17 to address that issue. Those day-to-day decisions --  
18 my explanation is those day-to-day decisions were  
19 impacting the implementing agreements.

20 Q Is it fair to say that as a result of these  
21 recent changes in traffic patterns that the employees  
22 that you represent have greater work opportunities on  
23 the Madill line?

24 A Because of the increase in business, the  
25 creek needs more manpower. So the answer to your

7 (Pages 22 to 25)

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|--|---|
| <p>1 question, I assume, would be yes.</p> <p>2 Q Given that statement that you need more</p> <p>3 manpower, is it fair to say that everybody that you</p> <p>4 currently represent is pretty much fully employed?</p> <p>5 A Well, the change from moving the traffic back</p> <p>6 to the creek side has now impacted the Frisco crews at</p> <p>7 Oklahoma City. To the best of my knowledge, for the</p> <p>8 most part they are out of work other than exercising</p> <p>9 expanded seniority from where they live -- their</p> <p>10 residence or general vicinity.</p> <p>11 Q Okay. So those are the people who exercise</p> <p>12 the right under the new allocation procedures to go to</p> <p>13 Oklahoma City?</p> <p>14 A Not necessarily. They were not involved.</p> <p>15 The Oklahoma City employees were not involved in the</p> <p>16 allocations. Those are different seniority rosters.</p> <p>17 The allocations in Gainesville and Ark City are from</p> <p>18 what we call the EEN 26 roster, which is seniority from</p> <p>19 Tulsa to Madill to Fort Worth.</p> <p>20 Q Is it fair to say that one of the purposes of</p> <p>21 17A was to ensure that members that you represent had</p> <p>22 sufficient work opportunities?</p> <p>23 A In our viewpoint it was through the merger</p> <p>24 the ability to follow that traffic that was pre-merger</p> <p>25 on the Frisco territory.</p> | <p>1 full capacity on a Madill line and 17A that you would</p> <p>2 be in a position at least to expand the number of</p> <p>3 people under your committee's jurisdiction?</p> <p>4 A Just the additional manpower can create that</p> <p>5 situation on any portion of the railroad. I represent</p> <p>6 employees in each state's. And because of the hiring</p> <p>7 practice, that can happen, anyway. So it is not --</p> <p>8 that's really difficult for me to say.</p> <p>9 Q Do you perceive that full implementation of</p> <p>10 17A under current circumstances with that traffic back</p> <p>11 on the Madill line would in any way adversely impact</p> <p>12 individuals represented by Mr. Williams?</p> <p>13 A That's difficult for me to pinpoint.</p> <p>14 Q It could happen?</p> <p>15 A I would assume they could be impacted in one</p> <p>16 form or another. May I expand?</p> <p>17 Q I'm sorry.</p> <p>18 A May I expand on that?</p> <p>19 Q Certainly.</p> <p>20 A When being asked these questions, it can't be</p> <p>21 viewed as this is a permanent situation. That's one of</p> <p>22 the motivational factors in all of this. And as I</p> <p>23 described early on, tomorrow this could change. The</p> <p>24 same traffic could be back on Red Rock. There is no</p> <p>25 permanency. Any of the parties I have discussed this</p> |
| Page 27  | Page 29   |
| <p>1 Q Does it make a difference to you whether you</p> <p>2 have rights to that traffic or not so long as everyone</p> <p>3 that you represent is fully employed?</p> <p>4 A Yes.</p> <p>5 Q Is it fair to say that if the Madill line</p> <p>6 is -- is it the Creek Sub or the Madill line? Which is</p> <p>7 the more accurate term?</p> <p>8 A They are one in the same.</p> <p>9 Q Okay. Thank you. Is it fair to say that if</p> <p>10 the Madill line is fully occupied, in other words, all</p> <p>11 of your current members are fully engaged over there</p> <p>12 and Implementing Agreement 17A is fully implemented,</p> <p>13 you would be basically expanding the number of them</p> <p>14 that you represent, and the carrier would have to add</p> <p>15 engineers to cover traffic on both of those lines under</p> <p>16 your committee?</p> <p>17 A Well, it has to be presented that there were</p> <p>18 just X amount of employees on the property or X amount</p> <p>19 of engineers that I represent in 1995 when the merger</p> <p>20 was realized.</p> <p>21 There is a continual hiring of employees that</p> <p>22 I represent. So there is -- there should be a</p> <p>23 distinction there between pre-merger and post-merger</p> <p>24 and the responsibilities and/or obligations.</p> <p>25 Q Isn't it true, though, that if you have both</p>  | <p>1 with recognize that fact.</p> <p>2 Q So there could be a short-term advantage to</p> <p>3 your committee, but that could go away quickly?</p> <p>4 A If there is an advantage, it could be gone as</p> <p>5 we sit here.</p> <p>6 MR. MUNRO: It is about 12:30 now. Can we go</p> <p>7 off the record for a second?</p> <p>8 (Discussion was held off the record.)</p> <p>9 (Whereupon, at 12:30 p.m., a luncheon recess</p> <p>10 was taken until 1:09 p.m. that same day.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   |



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|--|--|
| <p>1 AFTERNOON SESSION</p> <p>2 BY MR. MUNRO:</p> <p>3 Q Let's go back on the record. Mr. Gibbons,</p> <p>4 you recall before we took a break that I was asking you</p> <p>5 about other agreements with the railroad where there</p> <p>6 has been some sort of delay in the implementation.</p> <p>7 Do you remember that?</p> <p>8 A Yes.</p> <p>9 Q I believe that your testimony was that you</p> <p>10 heard about such things but you couldn't recall any</p> <p>11 personal experience with them?</p> <p>12 A Yes.</p> <p>13 Q Are you familiar with recent attempts to redo</p> <p>14 the interdivisional arrangements on, among other parts</p> <p>15 of the railroad, your part?</p> <p>16 A Just one with regard to a possible line sale.</p> <p>17 Q Are you familiar with an implementing</p> <p>18 agreement, excuse me, an interdivisional agreement that</p> <p>19 was imposed by arbitration back in July of last year</p> <p>20 between the BNSF and BLET?</p> <p>21 A No.</p> <p>22 Q Okay. Are you aware of any interdivisional</p> <p>23 agreement between BNSF and BLET from about that time</p> <p>24 frame summer last year other than the one that was</p> <p>25 imposed by arbitration?</p> | <p>1 A And vice versa.</p> <p>2 Q Okay. Prior to that -- prior to when it</p> <p>3 happened, prior to when the partial implementation</p> <p>4 occurred, had you discussed the idea with anyone?</p> <p>5 A The idea of?</p> <p>6 Q Of partial implementation.</p> <p>7 A Not that I recall.</p> <p>8 Q Whose idea was it to put Article 3 into</p> <p>9 effect without putting the rest of 17A into effect?</p> <p>10 A I can't speak to specific conversations, but</p> <p>11 it has always been the position of our office to</p> <p>12 implement 17A fully.</p> <p>13 Q Okay. I understand that's your position. I</p> <p>14 guess what I am asking is, what's your understanding</p> <p>15 about who proposed or who decided -- let me put it this</p> <p>16 way. Whose idea -- who came up with the idea of</p> <p>17 partially implementing it rather than putting the whole</p> <p>18 thing into effect?</p> <p>19 A I can't recall a specific conversation of how</p> <p>20 it was engaged.</p> <p>21 Q If you can't recall, you can't recall.</p> <p>22 That's fine. Before it happened, before the partial</p> <p>23 implementation went into effect, did you speak to</p> <p>24 Mr. Speagle about getting the allocations put in even</p> <p>25 if the train operations parts of 17A were not put into</p> |
| Page 31  | Page 33  |
| <p>1 A Not that I recall.</p> <p>2 Q Okay. With respect to 17A, it is your</p> <p>3 understanding that BNSF partially implemented it,</p> <p>4 correct?</p> <p>5 A Yes.</p> <p>6 Q What's your recollection of when that</p> <p>7 occurred?</p> <p>8 A Fall of '04.</p> <p>9 Q And what's your understanding regarding parts</p> <p>10 of 17A that were implemented?</p> <p>11 MR. WOLLY: You are asking him what parts</p> <p>12 were implemented?</p> <p>13 MR. MUNRO: Yes.</p> <p>14 BY MR. MUNRO:</p> <p>15 Q What's your understanding of the parts of 17A</p> <p>16 that were implemented?</p> <p>17 A It is my understanding that Article 3 of 17A</p> <p>18 was implemented.</p> <p>19 Q And what does Article 3 cover?</p> <p>20 A Allocations of assignments in the other</p> <p>21 predecessor pools -- the other predecessor roads and</p> <p>22 pools.</p> <p>23 Q So allocations of assignments in pools that</p> <p>24 were formally exclusively within Mr. Williams'</p> <p>25 jurisdiction; is that right?</p>  | <p>1 effect?</p> <p>2 A I don't recall if I spoke to him prior to</p> <p>3 that, no.</p> <p>4 Q You heard Mr. Bell testify earlier today that</p> <p>5 he received a letter from you on or about August 4</p> <p>6 concerning 17A. Do you remember that?</p> <p>7 A Yes.</p> <p>8 Q And do you recall that Mr. Bell testified</p> <p>9 that the partial implementation -- that he issued the</p> <p>10 notice on August 12. Do you remember that?</p> <p>11 A Yes.</p> <p>12 Q Okay. You also remember Mr. Bell testifying</p> <p>13 that at some point between August 4 and August 12 he</p> <p>14 had a phone conversation with you about implementation</p> <p>15 of 17A?</p> <p>16 A Yes.</p> <p>17 Q Do you agree that there was such a</p> <p>18 conversation? Without getting into the content of what</p> <p>19 it was, do you agree that there was a conversation -- a</p> <p>20 phone conversation with Mr. Bell somewhere in that</p> <p>21 period?</p> <p>22 A I believe there was, yes.</p> <p>23 Q What do you recall about what was said during</p> <p>24 that conversation?</p> <p>25 A I believe in at least one of the</p>   |

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1 conversations I had -- and I don't know if this was the  
 2 one or not. But we discussed the response he got from  
 3 his operating people. And I tried to justify again  
 4 where I thought it was doable from an operational  
 5 standpoint. And I think we discussed the fact that the  
 6 allocations were not part of that operational aspect.  
 7 And I don't know the specific conversation obviously,  
 8 but I think there was conversation as to moving forward  
 9 with that allocation portion.  
 10 Q Is it possible, based on what you can recall  
 11 about that conversation, that Mr. Bell may have come  
 12 away from it believing that you wanted him to at least  
 13 give you the allocations even if he couldn't do the  
 14 rest of it?  
 15 A I can't speak for him.  
 16 Q You are just not sure one way or the other?  
 17 A I know in my contact with him over this issue  
 18 I never changed my position as far as the question of  
 19 full implementation.  
 20 Q Let's suppose for the moment that the  
 21 agreement was structured in such a way that the carrier  
 22 could say, well, we are just not going to implement it  
 23 at all. And so your choice is between no  
 24 implementation and partial implementation of the  
 25 allocations. Between those two options, which would

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1 you prefer?  
 2 MR. WOLLY: I am going to object to that  
 3 because that, A, calls for speculation. And, secondly,  
 4 without a foundation, you are -- as I understand it,  
 5 you are asking him if this were the situation, would  
 6 you have had a preference?  
 7 MR. MUNRO: Yes.  
 8 MR. WOLLY: My objection stands.  
 9 THE WITNESS: I never pondered that  
 10 alternative.  
 11 BY MR. MUNRO:  
 12 Q Thinking about it now, which is more  
 13 appealing to you?  
 14 A Not implementing it at all.  
 15 Q So you would rather have none of it than just  
 16 the allocations?  
 17 A Yes.  
 18 Q And why is that?  
 19 A I don't think it is right. I don't think --  
 20 my motivation was to get all of what was in there. It  
 21 was a good faith effort to bargain and our committee  
 22 ratify it. I felt everything in there was justified.  
 23 Q Do you have any knowledge about whether  
 24 Mr. Speagle called Mr. Bell about the issue of  
 25 implementation 17A sometime between August 4 and August

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1 12?  
 2 A Only what I have heard.  
 3 Q What you have heard in testimony from  
 4 Mr. Bell?  
 5 A Yes.  
 6 Q Okay. You have never spoken to Mr. Speagle  
 7 about whether that took place or not?  
 8 A I have never questioned it. It never really  
 9 impacted anything I did.  
 10 Q Did you speak to Mr. Speagle about your  
 11 frustrations concerning implementation of 17A?  
 12 A Yes.  
 13 Q When was the first time you raised it with  
 14 him?  
 15 A I think it was shortly after the award was  
 16 signed.  
 17 Q And did you -- what was the content of that  
 18 original conversation with Mr. Speagle about that  
 19 issue?  
 20 A It was my perception that full-blown  
 21 implementation would be in short order, and I was  
 22 concerned why.  
 23 Q And what did he say in response to that?  
 24 A It was his impression that there was a 30-day  
 25 window to implement that.

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1 Q Did you have subsequent conversations with  
 2 him about that same issue later that same year?  
 3 A Yes.  
 4 Q I understand that this was more than a year  
 5 ago, so your memory about specifics may be fuzzy. But  
 6 roughly when did you next speak to him about it?  
 7 A I would say in the fall of 2004.  
 8 Q Okay. Sometime before the partial  
 9 implementation took place?  
 10 A In that time frame.  
 11 Q How many conversations with Mr. Speagle about  
 12 that issue do you recall prior to the partial  
 13 implementation? Two?  
 14 A Possibly.  
 15 Q Could it have been more than that?  
 16 A I would say at least two.  
 17 Q Did you have any discussions with Mr. Speagle  
 18 about whether the allocations were -- whether it would  
 19 be possible to get the allocations implemented even if  
 20 the train operation changes were not put into effect?  
 21 A I don't recall.  
 22 Q What's your recollection about who was  
 23 pushing the issue of allocation during the bargaining  
 24 over 17A?  
 25 A I would say our committee.

10 (Pages 34 to 37)

| Page 38  | Page 40   |
|--|---|
| <p>1 Q And who was proposing or advocating for the</p> <p>2 changes in train operations that are found in Article 2</p> <p>3 of 17A?</p> <p>4 A In previous conversations with Mr. Bell, we</p> <p>5 both conceded the fact that the 17A language was</p> <p>6 obsolete with regard to traffic.</p> <p>7 Q So that was something that both of you</p> <p>8 wanted?</p> <p>9 A I can't speak for Mr. Bell.</p> <p>10 Q But your impression of what he wanted. Is it</p> <p>11 true that that's something that both of you --</p> <p>12 A I feel he was motivated to make that change.</p> <p>13 Q What about Mr. Williams' committee? Was that</p> <p>14 an issue of contention with them or did they say that's</p> <p>15 fine with us?</p> <p>16 A As is in most cases, there was great debate</p> <p>17 over whose work belonged to who -- what work belonged</p> <p>18 to who.</p> <p>19 Q So the changes that became reflected in</p> <p>20 Article 2, that was a controversial issue?</p> <p>21 A I will have to refer to the agreement. Is</p> <p>22 Article 2 with --</p> <p>23 Q That's fine. Let's pull it out. I think it</p> <p>24 is Exhibit 11. I believe Article 2 is the one that</p> <p>25 addresses what people were to do?</p>   | <p>1 1?</p> <p>2 A I believe so, yes.</p> <p>3 Q Do you recall Mr. Bell testified earlier his</p> <p>4 belief that it is possible to implement changes in</p> <p>5 Article 3 addressing pool assignments without</p> <p>6 implementing train operations, that the two issues are</p> <p>7 distinct from one another. Do you remember that?</p> <p>8 A Yes.</p> <p>9 Q Do you agree with that?</p> <p>10 A Ask the question again.</p> <p>11 Q Do you agree with Mr. Bell that the pool</p> <p>12 assignments are, as a practical matter, distinct from</p> <p>13 the train operation changes in Article 1 and 2?</p> <p>14 A Yes.</p> <p>15 Q Do you still have Exhibit 11 in front of</p> <p>16 you? The date on the arbitration award is of June,</p> <p>17 correct? It is June of 2004.</p> <p>18 A Yes.</p> <p>19 Q When did you first learn that this would be,</p> <p>20 in fact, the agreement? In other words, was it prior</p> <p>21 to June of '04?</p> <p>22 A If I understand your question, I think it was</p> <p>23 recognized to me that prior to the signing by the</p> <p>24 carrier and employee members that the award was there.</p> <p>25 I don't know exactly when.</p>   |
| Page 39  | Page 41   |
| <p>1 A Article 2 is the work on line.</p> <p>2 Q Right.</p> <p>3 A Okay. Would you repeat the question?</p> <p>4 Q My question was, this was a controversial</p> <p>5 issue during negotiations of this agreement, correct?</p> <p>6 A Not with the Frisco Committee.</p> <p>7 Q And the dispute was between you and the</p> <p>8 carrier, on the one hand, and the Sante Fe committee,</p> <p>9 on the other hand?</p> <p>10 A I don't recall any dispute over this from our</p> <p>11 committee.</p> <p>12 Q Do you recall any dispute between the two</p> <p>13 committees over who should have that work?</p> <p>14 A I think -- I don't recall General Chairman</p> <p>15 Williams. But there was a local chairman in the Sante</p> <p>16 Fe committee that objected to Frisco crews doing work</p> <p>17 on their own.</p> <p>18 Q What about with respect to Article 1? What</p> <p>19 do you recall about that with respect to who was</p> <p>20 advocating for this sort of a change?</p> <p>21 A I know that the Frisco Committee was, and I</p> <p>22 feel BNSF was, too. We cited as language in 17 it was</p> <p>23 obsolete that needed to be addressed.</p> <p>24 Q Did you encounter resistance from</p> <p>25 Mr. Williams' committee about the provisions in Article</p> | <p>1 Q So there was a draft award circulated at some</p> <p>2 point prior to June?</p> <p>3 A I don't recall. I never saw one other than</p> <p>4 the one I received.</p> <p>5 Q What's your recollection about how soon you</p> <p>6 raised questions about when 17A would be implemented?</p> <p>7 A I recall -- I believe in one of my</p> <p>8 correspondence to Wendell Bell, I believe I identified</p> <p>9 it has been some 40 days or something along that line.</p> <p>10 Q The E-mail that you sent to him roughly 40</p> <p>11 days after the award was the first time you raised</p> <p>12 questions about implementation?</p> <p>13 A I can't remember if there was a phone call</p> <p>14 prior to that or not. I didn't --</p> <p>15 MR. MUNRO: Let's mark this as -- we are up</p> <p>16 to 14.</p> <p>17 (Exhibit No. 14, marked for identification.)</p> <p>18 BY MR. MUNRO:</p> <p>19 Q Mr. Gibbons, please look this over, and then</p> <p>20 tell me when you are ready.</p> <p>21 A Okay.</p> <p>22 Q Could you identify this for us, please?</p> <p>23 A It is an E-mail from me to Wendell Bell and</p> <p>24 CC'd to Steve Speagle and Pat Williams.</p> <p>25 Q Is this the E-mail you were referring to a</p> |

11 (Pages 38 to 41)

| Page 42  | Page 44   |
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| <p>1 minute ago when you said that you had inquired roughly<br/>2 40 days after the award about implementation?<br/>3 A I believe it is, yes.<br/>4 Q You make some references in this E-mail to<br/>5 being held hostage to what BNSF and UTU do with regard<br/>6 to this issue. Do you see that?<br/>7 A Yes.<br/>8 Q Did you have an understanding at this point<br/>9 when you wrote this E-mail that bargaining with the UTU<br/>10 was the motivating factor for the carrier's refusal to<br/>11 implement 17A?<br/>12 A I don't recall when that was discussed. I am<br/>13 at a loss there.<br/>14 Q At the time you wrote this, did you have that<br/>15 understanding?<br/>16 A I think by virtue of me putting the<br/>17 BNSF -- the third from the last sentence, I believe it<br/>18 must have been recognized with me that BNSF was trying<br/>19 to do something with UTU.<br/>20 Q And that that was the reason they hadn't gone<br/>21 forward with 17A, correct?<br/>22 A I assume, yes.<br/>23 Q You indicate in here in this E-mail that you<br/>24 should get what is due us immediately. In other words,<br/>25 you express a desire for some immediate relief on this</p> | <p>1 MR. MUNRO: Okay. Let's mark this as 15,<br/>2 please.<br/>3 (Exhibit No. 15, marked for identification.)<br/>4 BY MR. MUNRO:<br/>5 Q Mr. Gibbons, again, if you can look this over<br/>6 and let me know when you are ready.<br/>7 A Okay.<br/>8 Q Could you identify this for us, please?<br/>9 A It is a letter from my desk to Wendell Bell<br/>10 on August 4, 2004.<br/>11 Q Okay. I will stipulate that this document is<br/>12 the same as Exhibit C to the union's petition.<br/>13 A Okay.<br/>14 Q Did you draft this letter yourself?<br/>15 A Yes.<br/>16 Q Did you discuss it with anyone before sending<br/>17 it?<br/>18 A I don't recall.<br/>19 Q Why did you re-send this E-mail -- why did<br/>20 you copy your E-mail into the text of this document and<br/>21 re-send this at that time? Do you remember what your<br/>22 motivation was in doing so?<br/>23 A I would suggest it is because we hadn't<br/>24 received a reply from the E-mail.<br/>25 Q Why was this implementation of 17A an issue</p> |
| Page 43  | Page 45   |
| <p>1 issue. Do you see that? It is in the second to last<br/>2 sentence.<br/>3 A Okay.<br/>4 Q Is that a fair characterization of the<br/>5 document that you were asking for immediate<br/>6 implementation?<br/>7 A Yes.<br/>8 Q Did you discuss that issue -- a desire for<br/>9 immediate implementation back when you bargained 17A?<br/>10 A I don't know that I discussed that with them.<br/>11 I think BNSF, Wendell Bell, expressed to me how he was<br/>12 posturing himself.<br/>13 Q What did you mean by that?<br/>14 A With regard to trying to get a pattern<br/>15 agreement or award with UTU.<br/>16 Q Did you receive any response from Wendell to<br/>17 this E-mail?<br/>18 A I don't recall anything.<br/>19 Q Did you discuss this E-mail with Mr. Speagle<br/>20 and Mr. Williams before you sent it?<br/>21 A I don't believe I did.<br/>22 Q You do not believe you did?<br/>23 A No.<br/>24 Q Did you discuss it with anyone else?<br/>25 A Not that I recall.</p>   | <p>1 for you at this particular point? Was there some sort<br/>2 of external pressure on you to get it implemented?<br/>3 A Not any more than I put on myself.<br/>4 Q Were you getting complaints from your local<br/>5 chairmen about this issue?<br/>6 A Inquiring about the status.<br/>7 Q Were you getting inquiries from members?<br/>8 A I don't recall.<br/>9 Q Who inquired about the status among your<br/>10 local chairmen?<br/>11 A I think for one, my local chairman on the<br/>12 Fort Worth end of the pool.<br/>13 Q And who was that at the time?<br/>14 A Jeff Thurman.<br/>15 Q Anyone else that you recall?<br/>16 A No.<br/>17 Q Did you receive a response to this letter?<br/>18 A I don't recall.<br/>19 MR. MUNRO: Let's mark this as 16, please.<br/>20 (Exhibit No. 16, marked for identification.)<br/>21 BY MR. MUNRO:<br/>22 Q Again, Mr. Gibbons, if you can look this<br/>23 over. And when you are ready, tell us what it is, if<br/>24 you know.<br/>25 A Okay.</p>                            |

12 (Pages 42 to 45)

| Page 46  | Page 48  |
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| <p>1 Q Do you recognize this document?</p> <p>2 A Yes.</p> <p>3 Q What is it?</p> <p>4 A It is an E-mail thread first from my office</p> <p>5 to Wendell Bell and then a response from Wendell to me.</p> <p>6 Q Does this refresh your recollection about</p> <p>7 whether you received a reply to your August 4 letter?</p> <p>8 A Yes.</p> <p>9 Q Do you see in Mr. Bell's reply that he</p> <p>10 asserts that the operational changes covered by 17A</p> <p>11 can't be implemented until the UTU aspect is</p> <p>12 completed? It is the first and second lines. Do you</p> <p>13 see that?</p> <p>14 A Yes.</p> <p>15 Q Is that assertion consistent with Mr. Bell's</p> <p>16 previous statements about why the carrier wasn't</p> <p>17 implementing 17A?</p> <p>18 A Yes.</p> <p>19 Q Do you agree Mr. Bell that it is generally</p> <p>20 preferable for the carrier to have agreements with both</p> <p>21 unions that correspond or that match up?</p> <p>22 A Not necessarily.</p> <p>23 Q You just don't think it matters?</p> <p>24 A It doesn't matter to me when I sign something</p> <p>25 with the carrier.</p>   | <p>1 UTU, or did you have that understanding prior to this</p> <p>2 point?</p> <p>3 A I had no knowledge of what he was setting up</p> <p>4 or when he was setting it up. And, to me, that's one</p> <p>5 of a general statement.</p> <p>6 Q Did you contact anyone at UTU about this</p> <p>7 issue?</p> <p>8 A I don't believe I did.</p> <p>9 Q Did you call Wendell in response to this</p> <p>10 E-mail?</p> <p>11 A I don't know if I called him in response to</p> <p>12 the E-mail.</p> <p>13 Q Do you see the reference in the first line to</p> <p>14 how we, the carrier, does not see how the operational</p> <p>15 changes can be implemented. Do you see that language?</p> <p>16 A Uh-huh.</p> <p>17 Q Did that suggest to you that the carrier</p> <p>18 might be open to the idea of implementing the</p> <p>19 allocations? Did that thought cross your mind at the</p> <p>20 time?</p> <p>21 A I don't recall.</p> <p>22 Q Do you see the parenthetical in the middle of</p> <p>23 the page, "I remain persuadable on that point"?</p> <p>24 A Yes.</p> <p>25 Q There is a reference to the revised pool</p>        |
| Page 47  | Page 49  |
| <p>1 Q Do you understand that the carrier has a</p> <p>2 motivation to have those parallel agreements?</p> <p>3 A What was explained to me wasn't justified.</p> <p>4 Q I am sorry?</p> <p>5 A Their position on why they didn't implement</p> <p>6 that wasn't justified in my eyes.</p> <p>7 Q Without respect to whether it was justified</p> <p>8 or not, do you understand that the carrier is motivated</p> <p>9 to have the same agreements in place for both members</p> <p>10 of the train crew -- ground service and engine service?</p> <p>11 A Not necessarily.</p> <p>12 Q Did you understand that the carrier was</p> <p>13 involved in an effort to obtain a parallel agreement</p> <p>14 with UTU at this time on August 4?</p> <p>15 A It is my recollection that there hasn't even</p> <p>16 been a meeting set up with UTU at this time.</p> <p>17 Q Did you understand that the planning was in</p> <p>18 the works for such a meeting?</p> <p>19 A I had no information as to when a date would</p> <p>20 be.</p> <p>21 Q Do you see the last line in Mr. Bell's</p> <p>22 E-mail, last two lines. He says that he figures</p> <p>23 August 31, September 1 is an opportunity. Do you see</p> <p>24 that language? Is that the first indication you had</p> <p>25 that Mr. Bell might be attempting to negotiate with</p> | <p>1 allocations. Did you understand Mr. Bell to be</p> <p>2 inviting you to persuade him that the allocations could</p> <p>3 be implemented separately?</p> <p>4 A It looks like he is inviting the possibility</p> <p>5 of partial implementation.</p> <p>6 (Exhibit No. 17, marked for identification.)</p> <p>7 BY MR. MUNRO:</p> <p>8 Q Again, please look this over and tell me when</p> <p>9 you are ready.</p> <p>10 A Okay.</p> <p>11 Q Can you identify it?</p> <p>12 A Yes.</p> <p>13 Q What is it?</p> <p>14 A It is correspondence from the desk of Wendell</p> <p>15 Bell to myself and Pat Williams.</p> <p>16 Q And this is purporting to be the notice</p> <p>17 putting Article 3 and the side letters into effect,</p> <p>18 correct?</p> <p>19 A That's correct.</p> <p>20 Q This is the same as Exhibit D to the</p> <p>21 petition. What's your understanding of why Mr. Bell</p> <p>22 sent this notice of partial implementation?</p> <p>23 A To allow for the allocation of jobs from the</p> <p>24 former predecessor Rhodes to the other pool members.</p> <p>25 Q Why would he want to do that without</p> |

| Page 50  | Page 52  |
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| <p>1 implementing the rest of 17A?</p> <p>2 A Mr. Bell would have to answer that.</p> <p>3 Q Can you conceive of any motivation he would</p> <p>4 have for doing that?</p> <p>5 A I guess in reference to one of his E-mails he</p> <p>6 was doing a good deed.</p> <p>7 Q Isn't it true, Mr. Gibbons, that Mr. Bell did</p> <p>8 this because you asked him to?</p> <p>9 A We discussed this. But to not take that out</p> <p>10 of context, it was to become a full-blown</p> <p>11 implementation.</p> <p>12 Q Did you view partial implementation as a step</p> <p>13 toward full implementation down the road?</p> <p>14 A That's exactly what I thought inasmuch as the</p> <p>15 award being fully implemented.</p> <p>16 Q Did the carrier gain any advantage from</p> <p>17 having the pool allocations changed?</p> <p>18 A I can't answer that.</p> <p>19 Q Did you call Mr. Bell after this notice of</p> <p>20 implementation came out?</p> <p>21 A I can't specifically say if I called him when</p> <p>22 I received this or not. We interact on a lot of</p> <p>23 different levels. I don't recall making a phone call</p> <p>24 with regard to this.</p> <p>25 Q Do you recall speaking to him before this</p> | <p>1 correspondence regarding the 17A allocation subsequent</p> <p>2 to the August 12 notice that he sent out?</p> <p>3 A Somewhat.</p> <p>4 Q Let me direct your attention to the portion</p> <p>5 that you sent to Wendell?</p> <p>6 A Okay.</p> <p>7 Q This indicates that the allocations were</p> <p>8 going into effect on Monday. Do you see that?</p> <p>9 A Yes.</p> <p>10 Q So that would have been Monday, August 23?</p> <p>11 A Okay.</p> <p>12 Q Is that about when you recall that the</p> <p>13 allocations did, in fact, go into effect?</p> <p>14 A Generally speaking.</p> <p>15 Q And so it is fair to say, is it not, that you</p> <p>16 accepted the allocations once they became available,</p> <p>17 right? You didn't refuse to proceed with that change,</p> <p>18 correct?</p> <p>19 A That's correct.</p> <p>20 Q And there is no indication in this E-mail</p> <p>21 that you objected to implementation of those</p> <p>22 allocations, right?</p> <p>23 A That's correct.</p> <p>24 Q And, in fact, isn't it the case that you were</p> <p>25 happy to at least get the allocations even if you</p>   |
| Page 51  | Page 53  |
| <p>1 came out? In other words, did he call you to tell you</p> <p>2 he was sending it?</p> <p>3 A I don't recall.</p> <p>4 Q Did you respond in writing to this notice at</p> <p>5 any point?</p> <p>6 A Specific to the notice, I don't recall.</p> <p>7 Q So is it fair to say that you don't recall</p> <p>8 what your next correspondence was with Mr. Bell on the</p> <p>9 subject of allocations after this notice was put out?</p> <p>10 A I can't pull a date or time or anything like</p> <p>11 that.</p> <p>12 Q It is not surprising. I can't remember what</p> <p>13 I did last week.</p> <p>14 MR. MUNRO: Let's mark this as 18.</p> <p>15 (Exhibit No. 18, marked for identification.)</p> <p>16 BY MR. MUNRO:</p> <p>17 Q Please let me know when you are ready.</p> <p>18 A Okay.</p> <p>19 Q Can you identify this document?</p> <p>20 A Yes.</p> <p>21 Q What is it?</p> <p>22 A It is an E-mail thread originally from myself</p> <p>23 to Wendell Bell with a reply from him to me. Jennifer</p> <p>24 Corum and Pat Williams were CC'd on it.</p> <p>25 Q Does this refresh your recollection about</p>   | <p>1 didn't have the other aspects of 17A at that point?</p> <p>2 A I don't know if happy is the word. I</p> <p>3 accepted the allocations.</p> <p>4 (Exhibit No. 19, marked for identification.)</p> <p>5 BY MR. MUNRO:</p> <p>6 Q Again, Mr. Gibbons, just tell us when you are</p> <p>7 ready.</p> <p>8 A Okay.</p> <p>9 Q Could you identify this document for us,</p> <p>10 please?</p> <p>11 A It is a letter from my desk to Wendell Bell</p> <p>12 on September 1, 2004.</p> <p>13 Q And this is concerning the partial</p> <p>14 implementation of 17A, correct?</p> <p>15 A That's correct.</p> <p>16 Q This is the same as Petition Exhibit E. What</p> <p>17 prompted you to send this letter at this time?</p> <p>18 A I would suspect my motivation was conveying</p> <p>19 my position to fully implement as it had been all</p> <p>20 along.</p> <p>21 Q Why did you send the letter on September 1</p> <p>22 and not previously? In other words, the notice had</p> <p>23 gone out on the 12th. The allocations went into effect</p> <p>24 sometime around the 23rd, and you accepted the</p> <p>25 allocations at that point. Why hadn't you objected to</p> |

| Page 54  | Page 56  |
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| <p>1 the partial implementation until September 1?</p> <p>2 A I can't speak specifically why I sent this on</p> <p>3 September 1 and not another day. But I do feel like in</p> <p>4 previous conversations I had tried to convey my point</p> <p>5 to him as to what our position was.</p> <p>6 Q You have a reference there in the second</p> <p>7 paragraph to previous discussions and previous</p> <p>8 correspondence on this matter. And you indicate that</p> <p>9 in those discussions and correspondence, you had</p> <p>10 expressed the view that the carrier does not have the</p> <p>11 right or the authority to parcel out portions of this</p> <p>12 award. Do you see that?</p> <p>13 A Uh-huh.</p> <p>14 Q What previous correspondence reflected those</p> <p>15 sentiments?</p> <p>16 A I can't say specifically. But in trying to</p> <p>17 jar my recollection, I would say that that was more in</p> <p>18 general than specifically discussing the authority to</p> <p>19 parcel out. There was obviously some correspondence in</p> <p>20 17A. I am speculating.</p> <p>21 Q Okay. You don't have any recollection of</p> <p>22 correspondence on a particular issue of partial</p> <p>23 implementation prior to this letter?</p> <p>24 A No.</p> <p>25 Q It is fair to say that at this point as</p> | <p>1 terms.</p> <p>2 Q Did you receive any response from Wendell to</p> <p>3 this letter?</p> <p>4 A I don't recall.</p> <p>5 Q Did you have any concern at this time about</p> <p>6 whether this might set a broader precedent of partial</p> <p>7 implementation of agreements or were you focused</p> <p>8 specifically on 17A alone?</p> <p>9 A That was my mindset was implementing</p> <p>10 Agreement 17A.</p> <p>11 (Exhibit No. 20, marked for identification.)</p> <p>12 BY MR. MUNRO:</p> <p>13 Q Mr. Gibbons, have you had a chance to look</p> <p>14 this over?</p> <p>15 A Yes.</p> <p>16 Q Can you tell me what it is, please?</p> <p>17 A It is an E-mail thread beginning from me to</p> <p>18 Wendell Bell in response from Wendell to myself,</p> <p>19 Jennifer Corum, Tommy Mathies, James C. Mathies, and</p> <p>20 Lee M. Matts.</p> <p>21 Q Does this document refresh your recollection</p> <p>22 that you were engaged in conversations with Wendell</p> <p>23 around this time frame about the mechanics of</p> <p>24 allocations under Article 3 of 17A?</p> <p>25 A Yes.</p>  |
| Page 55  | Page 57  |
| <p>1 previously you were trying to get the carrier to fully</p> <p>2 implement 17A, correct?</p> <p>3 A Exactly.</p> <p>4 Q Did you feel that it aided your position in</p> <p>5 any way on that issue that there had been a partial</p> <p>6 implementation?</p> <p>7 A I don't think there as any forethought other</p> <p>8 than expressing our position on the matter.</p> <p>9 Q So you didn't connect the issue of partial</p> <p>10 implementation with the issue of whether the carrier</p> <p>11 was within its rights to delay the whole thing?</p> <p>12 A Say again, please. Repeat the question.</p> <p>13 Q I will try. Did you connect in any way the</p> <p>14 fact that there had been a partial implementation with</p> <p>15 the question of whether the carrier was properly able</p> <p>16 to delay implementation of the whole thing? If you</p> <p>17 don't understand the question, I will try to rephrase</p> <p>18 it.</p> <p>19 A Rephrase it, please.</p> <p>20 Q You wanted the carrier to fully implement?</p> <p>21 A That's correct.</p> <p>22 Q Did you think that you had a better argument</p> <p>23 for full implementation after getting the partial</p> <p>24 implementation?</p> <p>25 A Personally I never thought of that in those</p>  | <p>1 Q And so is it fair to say that this E-mail</p> <p>2 indicates that you were cooperating with the</p> <p>3 implementation of those allocations?</p> <p>4 A I would suggest that it recognizes the fact</p> <p>5 that I was involved in the day-to-day matters with it.</p> <p>6 Q I mean, you never objected and said, Wait a</p> <p>7 minute, you can't implement Article 3 only, and so, you</p> <p>8 know, we refuse to do the allocations, right? You</p> <p>9 never said anything like that?</p> <p>10 A In regard to this E-mail thread?</p> <p>11 Q No, no, no. In this time frame generally.</p> <p>12 A As I testified earlier, I accepted that as</p> <p>13 the first step.</p> <p>14 Q And, in fact, you not only accepted it, you</p> <p>15 cooperated with the carrier in getting it implemented,</p> <p>16 right?</p> <p>17 A Yes.</p> <p>18 Q Let me direct your attention back to what was</p> <p>19 previously marked as Exhibit 5. Mr. Gibbons, I have</p> <p>20 shown you what was previously marked as Exhibit 5. Do</p> <p>21 you recognize this document?</p> <p>22 A Yes.</p> <p>23 Q Have you seen it before today?</p> <p>24 A Yes.</p> <p>25 Q Do you recall reviewing this E-mail around</p> |

15 (Pages 54 to 57)

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| <p style="text-align: right;">Page 58</p> <p>1 the time that is indicated it was sent back in November<br/> 2 of 2004?<br/> 3 A Somewhat, yes. I don't think this is the<br/> 4 entire thread. I don't know if it matters, but --<br/> 5 Q Okay. You are noting that there appears that<br/> 6 the original message for Mr. Hagar continues onto a<br/> 7 separate page. Is that what you mean?<br/> 8 A Right.<br/> 9 Q Let me direct your attention to the middle<br/> 10 message. This is the one from Mr. Williams to<br/> 11 Wendell. Do you see that?<br/> 12 A Yes.<br/> 13 Q Do you know what prompted that statement from<br/> 14 Mr. Williams?<br/> 15 A I can't answer that.<br/> 16 Q Did you have any discussions with him about<br/> 17 this issue at around this time?<br/> 18 A I don't recall.<br/> 19 Q Aside from conversations that you may have<br/> 20 had with Mr. Williams about the issue of partial<br/> 21 implementation of 17A that took place with your counsel<br/> 22 in this case, have you ever discussed the issue of<br/> 23 partial implementation with Mr. Williams?<br/> 24 A I don't recall if we had an oral<br/> 25 conversation. I think -- I recall reading this E-mail,</p>    | <p style="text-align: right;">Page 60</p> <p>1 BY MR. MUNRO:<br/> 2 Q I will try. You are unhappy with the current<br/> 3 state of affairs with 17A, correct?<br/> 4 A Unhappy to me --<br/> 5 Q You are not satisfied with the --<br/> 6 A I don't think it is right.<br/> 7 Q Okay. Which of these two things do you think<br/> 8 is not right -- the fact that the carrier partially<br/> 9 implemented or the fact that it hasn't implemented the<br/> 10 rest of the agreement or both?<br/> 11 A I don't think it is right that the carrier<br/> 12 has not implemented the rest of the agreement.<br/> 13 Q Did you ask the BLET to progress this issue<br/> 14 to the STB?<br/> 15 MR. WOLLY: I am going to object to that.<br/> 16 That is privileged.<br/> 17 MR. MUNRO: How is his conduct dealing with<br/> 18 union privileged?<br/> 19 MR. WOLLY: Any conversation inside about<br/> 20 seeking legal -- institution of legal proceedings<br/> 21 involves counsel aside from the fact I can't figure out<br/> 22 why it is relevant.<br/> 23 MR. MUNRO: Relevance objections are never<br/> 24 appropriate at depositions.<br/> 25 BY MR. MUNRO:</p>  |
| <p style="text-align: right;">Page 59</p> <p>1 so.<br/> 2 Q Okay. My question is more broadly than<br/> 3 around the time of this E-mail. Just generally do you<br/> 4 recall ever talking to Mr. Williams about this question<br/> 5 of partial implementation of 17A?<br/> 6 A I don't believe so, other than the day to day<br/> 7 that were referenced in the previous exhibits. I don't<br/> 8 think I had any general conversation with him about<br/> 9 it. I don't recall.<br/> 10 Q Mr. Gibbons, would you say that your<br/> 11 objection to the current state of affairs is more about<br/> 12 the partial implementation that took place or more<br/> 13 about the fact that BNSF has refused to implement the<br/> 14 other parts of 17A?<br/> 15 MR. WOLLY: I am sorry. I don't understand<br/> 16 the question. I am going to instruct him not to answer<br/> 17 since I don't know --<br/> 18 MR. MUNRO: Well, you can't instruct a<br/> 19 witness not to answer a question unless there is a<br/> 20 question of privilege.<br/> 21 BY MR. MUNRO:<br/> 22 Q Do you understand that question?<br/> 23 MR. WOLLY: If you don't, tell him.<br/> 24 THE WITNESS: Could you rephrase the<br/> 25 question?</p> | <p style="text-align: right;">Page 61</p> <p>1 Q I am not asking you to disclose any<br/> 2 conversations you had with union counsel. I am asking<br/> 3 whether you made a request to the union to progress<br/> 4 this issue to the STB?<br/> 5 MR. WOLLY: I will object. You can answer<br/> 6 that question. He is asking if you were the one -- if<br/> 7 you were a person, not if you were necessarily the only<br/> 8 person. If you were a person that asked the union to<br/> 9 file a case with the STB.<br/> 10 THE WITNESS: I sought legal counsel on the<br/> 11 issue.<br/> 12 BY MR. MUNRO:<br/> 13 Q Okay. Did you discuss this matter with<br/> 14 anyone other than legal counsel before you took that<br/> 15 step?<br/> 16 A If I understand the question, I discussed it<br/> 17 with several people, as I have testified. Maybe I am<br/> 18 missing your question.<br/> 19 Q Before you sought legal counsel, who did you<br/> 20 talk to about this issue within the union? You say you<br/> 21 spoke to several people. Who were they?<br/> 22 A I spoke to vice president Speagle --<br/> 23 Q Okay.<br/> 24 A -- who had been involved in the negotiations<br/> 25 and who was assigned to my committee. And as far as</p> |

16 (Pages 58 to 61)



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| <p style="text-align: right;">Page 62</p> <p>1 outside of our committee, Pat Williams and legal<br/>2 counsel.<br/>3 Q Okay. Other than legal counsel,<br/>4 Mr. Williams, and Mr. Speagle, the only union officer<br/>5 that you --<br/>6 A That's all I recall.<br/>7 Q That's all I wanted to know. Getting back to<br/>8 this document Exhibit 5, Wendell has a response to<br/>9 Mr. Williams' E-mail there at the top of the page. Do<br/>10 you see that?<br/>11 A Yes.<br/>12 Q And he says, as he testified earlier today,<br/>13 that his idea was to leave the agreement on the shelf,<br/>14 he was resisting efforts to put it into effect, and<br/>15 that eventually Rick and Steve convinced me that we<br/>16 could go forward with the allocations, while leaving<br/>17 the operational implementation until the UTU 17A was<br/>18 reached.<br/>19 Do you see that?<br/>20 A Yes.<br/>21 Q Is that an accurate characterization, would<br/>22 you say?<br/>23 A Yes.<br/>24 Q Did you ever respond to this E-mail from<br/>25 Wendell?</p>  | <p style="text-align: right;">Page 64</p> <p>1 Mr. Bell. Can you look this over and tell me if you<br/>2 are familiar with this document?<br/>3 A Okay.<br/>4 Q Is this something you are familiar with?<br/>5 A Yes.<br/>6 Q Did you, in fact, draft this letter?<br/>7 A Yes. I don't know the note fax percentage.<br/>8 I don't know what that is. It is not mine at the top.<br/>9 I don't know where that came from.<br/>10 Q Yeah, that's not on my copy, so I don't<br/>11 know.<br/>12 A I am saying that because it is not in the<br/>13 same font.<br/>14 Q It looks to me like that was something that<br/>15 was added later.<br/>16 A Other than that --<br/>17 Q Our Bates-stamped copy didn't have that.<br/>18 MR. WOLLY: Yeah, the one that was made an<br/>19 exhibit wasn't a Bates-stamped copy.<br/>20 MR. MUNRO: We can substitute it, but I don't<br/>21 think it matters. We can address that later.<br/>22 BY MR. MUNRO:<br/>23 Q This is sent in late February of 2005. And<br/>24 the last correspondence from you on this issue 17A was<br/>25 September 1; is that correct?</p>   |
| <p style="text-align: right;">Page 63</p> <p>1 A I don't recall.<br/>2 Q Did you ever have -- do you see in the last<br/>3 part of this E-mail he says, I am certainly willing to<br/>4 meet to resolve those sort of issues, referring to<br/>5 Mr. Hagar's complaints.<br/>6 Do you see the last paragraph?<br/>7 A Okay.<br/>8 Q Did you ever have such a meeting?<br/>9 A Mr. Hagar is not in my committee.<br/>10 Q Did you ever have a meeting with Mr. Bell<br/>11 about these issues?<br/>12 A About?<br/>13 Q About the issues that Mr. Hagar was<br/>14 complaining about?<br/>15 A I don't know. I am assuming this is<br/>16 Mr. Hagar who started the thread. I don't know what --<br/>17 what I recall is I tried to relay what I thought the<br/>18 perception of the crew change was, much like I did<br/>19 earlier today.<br/>20 Q Okay.<br/>21 A And I don't know when that took place -- when<br/>22 or where.<br/>23 Q Let me see if I can help you with that. The<br/>24 previously marked Exhibit 7 -- oh, I am sorry --<br/>25 previously marked as Exhibit 7 is this letter to</p> | <p style="text-align: right;">Page 65</p> <p>1 A I would have to check my files. Hopefully<br/>2 all the correspondence is there. I haven't put the<br/>3 dates together.<br/>4 Q Is it possible that a period of time from<br/>5 September 1 to February 25 went by when you didn't<br/>6 correspond with Mr. Bell on this issue?<br/>7 A I think that Wendell would attest to the fact<br/>8 that we had conversations off and on. And we would<br/>9 engage on other issues. And spontaneously we would<br/>10 reference this kind of stuff. I can't recall in that<br/>11 time frame whether we had discussions on it or not.<br/>12 Q So you may have spoken to Mr. Bell by phone<br/>13 or in person?<br/>14 A Yes.<br/>15 Q Between September 1 and February 25; is that<br/>16 correct?<br/>17 A Yes.<br/>18 Q Do you recall what prompted you to send this<br/>19 letter at this time in particular with respect to 17A?<br/>20 A Not specifically, no.<br/>21 Q Do you recall generally what it was?<br/>22 A I don't know that there was any specific<br/>23 matter or situation. We are in the habit of<br/>24 following-up on situations periodically. And it seemed<br/>25 like February 25 was an opportunity.</p> |

17 (Pages 62 to 65)

| Page 66   | Page 68   |
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| <p>1 Q Fair enough. The third paragraph there is a<br/>2 discussion of something we were talking about earlier<br/>3 with respect to how the crew change points would work<br/>4 if 17A were implemented without a parallel agreement<br/>5 from UTU; is that right.<br/>6 A Generally, yes.<br/>7 Q At the risk of rehashing this, let me see if<br/>8 I can capture what it is that you are saying. Your<br/>9 idea that there are not any additional crew change<br/>10 points -- any additional stops required if 17A is put<br/>11 into effect depends on that local arrangement you have<br/>12 in Perry Black Bear; is that correct? As long as<br/>13 that's in place, it is a push?<br/>14 A Let me think. And this is pondering for 30<br/>15 seconds. But what I see is absent 17A and absent the<br/>16 local arrangement, there would be a crew change point<br/>17 moved from Oak City to Black Bear in accordance with 17<br/>18 language. My vision of this or my perception of this<br/>19 was that, absent any pattern agreement with the UTU or<br/>20 using ours as a pattern, it would be a push in the<br/>21 awards. If I may --<br/>22 Q Sure.<br/>23 A What I saw was by virtue of 17A, BNSF would<br/>24 not be liable for one additional engineer crew start in<br/>25 this without doing anything with the UTU's operations</p> | <p>1 Q Could you tell us generally what it is about?<br/>2 A This was due to traffic from the Red Rock<br/>3 back to Creek Sub -- Red Rock Sub to the Creek Sub. It<br/>4 references the storms and capacity issues.<br/>5 Q Is it fair to say that this document reflects<br/>6 your understanding that we talked about earlier that<br/>7 there has been a transfer of traffic back to the Madill<br/>8 line?<br/>9 A Yes.<br/>10 Q You have a reference here further down to a<br/>11 knee jerk reaction operational discretion when the TSPs<br/>12 set in pencil to be changed with great frequency.<br/>13 Do you see that?<br/>14 A Yes.<br/>15 Q What is a TSP? Does it stand for<br/>16 Transportation Service Plan?<br/>17 A Yes.<br/>18 Q What do you mean by that? What are you<br/>19 referring to there?<br/>20 A The operations people are the ones that<br/>21 decide which corridor they are going to run a train.<br/>22 Obviously these are parallel corridors. It had been<br/>23 kind of an in-house joke that when one of the operating<br/>24 folks rolls out of bed in the morning they decide which<br/>25 corridor they are going to run a train on. This was my</p>  |
| Page 67   | Page 69   |
| <p>1 or the trainman's operations. To me, it would be a<br/>2 savings of one engineer's crew start.<br/>3 Q If 17A were put into effect, you would have a<br/>4 difference between the current arrangement for UTU and<br/>5 the 17A arrangement for BLET such that UTU would still<br/>6 have this distinction between designated and<br/>7 non-designated trains, right?<br/>8 A I can't speak to the language.<br/>9 Q You don't know?<br/>10 A I have never seen their implementing<br/>11 agreement. I don't know.<br/>12 Q Do you have an understanding that the UTU<br/>13 agreement mirrors the BLET agreement in that respect?<br/>14 A Just by virtue of Mr. Bell's testimony.<br/>15 (Exhibit No. 21, marked for identification.)<br/>16 BY MR. MUNRO:<br/>17 Q Please let me know when you have finished<br/>18 looking this over.<br/>19 A Okay.<br/>20 Q Do you recognize this document?<br/>21 A Yes.<br/>22 Q What is it?<br/>23 A It is an E-mail from my office to Ed Hundley,<br/>24 Jennifer Coram, Wendell Bell, Melissa Beasley and CC'd<br/>25 to Randy Dumey, George Haskins, and Tom Buyan.</p>  | <p>1 attempt at levity inasmuch as it is a knee-jerk<br/>2 reaction and which way they want to go. There is a lot<br/>3 of things that decide that. And they dismiss the fact<br/>4 that we have allocations, job equities, implementing<br/>5 agreements in place.<br/>6 Q So the fact that the carrier -- your concern,<br/>7 isn't it true, is that the carrier's needs for<br/>8 operational flexibility sometimes adversely affects<br/>9 work equity issues for your members; is that right?<br/>10 A Inasmuch as both parties enter into these<br/>11 agreements hopefully in good faith and to -- without<br/>12 discussions either with our office or with the labor<br/>13 relation. I can't speak for Wendell. But these<br/>14 decisions are made, and we are left to pick up the<br/>15 pieces, so to speak. So inasmuch as the carrier is<br/>16 deciding how their operation is going to run, being the<br/>17 bargaining agent, we try to detect what we need in<br/>18 place to take care of those events. And this is my<br/>19 projection that they dismissed those agreements,<br/>20 meaning the operating folks.<br/>21 Q All right.<br/>22 (Exhibit No. 22, marked for identification.)<br/>23 BY MR. MUNRO:<br/>24 Q And, again, let me know when you are ready.<br/>25 A Okay.</p> |

| Page 70   | Page 72   |
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| <p>1 Q Could you identify this for us, please?</p> <p>2 A This is the petition that was filed by the</p> <p>3 BLET with regard to this case.</p> <p>4 Q And are you familiar with its contents?</p> <p>5 A To some degree, yes.</p> <p>6 Q Do you agree with the allegations that are in</p> <p>7 here?</p> <p>8 A Yes.</p> <p>9 Q The last letter that we looked at from you</p> <p>10 was written correspondence, which was the February 25</p> <p>11 letter. And this petition is dated November 2.</p> <p>12 A Absent the E-mails?</p> <p>13 Q Yes, not that one. The last letter that</p> <p>14 specifically addresses the issue of implementation of</p> <p>15 17A?</p> <p>16 A Okay.</p> <p>17 Q My question is, can you explain why it took</p> <p>18 eight months to file the petition after your February</p> <p>19 25 letter?</p> <p>20 A No.</p> <p>21 Q It is fair to say that you did not get what</p> <p>22 you viewed as an adequate response to your February 25</p> <p>23 letter, correct?</p> <p>24 A That's correct. I don't know if I got any</p> <p>25 response. I don't recall.</p>  | <p>1 the union specifically agreed to do so?</p> <p>2 A Repeat the question.</p> <p>3 Q Sure. You have an agreement with the carrier</p> <p>4 that hasn't been implemented yet. The union asks the</p> <p>5 carrier to implement part of it. And the carrier</p> <p>6 agrees to do so. Would you agree in those</p> <p>7 circumstances the carrier has the right to proceed if</p> <p>8 it has the expressed consent of the union?</p> <p>9 A I don't think they have the right to shelf</p> <p>10 the rest of the agreement if it takes -- I don't agree</p> <p>11 with that.</p> <p>12 Q Suppose you have an agreement with the</p> <p>13 carrier. Can the union ask the carrier to withhold</p> <p>14 implementation of it? In other words, could the union</p> <p>15 say, Wait a minute, don't put that into effect yet?</p> <p>16 A I don't know.</p> <p>17 Q Are you aware of any E-mails about this issue</p> <p>18 between you and other BLET members other than the ones</p> <p>19 we have looked at today?</p> <p>20 A The only ones that I immediately recall were</p> <p>21 disclosed with counsel yesterday from general</p> <p>22 population, I guess.</p> <p>23 Q Have you done a search of your E-mail files?</p> <p>24 A Yes, I did a Google desktop. And I printed</p> <p>25 out everything that came out under the heading of Imp.</p> |
| Page 71   | Page 73   |
| <p>1 Q Did you continue to discuss with Wendell this</p> <p>2 issue of implementation of 17A after the February 25</p> <p>3 letter?</p> <p>4 A I don't recall.</p> <p>5 Q Can you explain why you don't have any</p> <p>6 knowledge of why it took eight months for the petition</p> <p>7 to be filed?</p> <p>8 A No.</p> <p>9 Q Did you not have any decision-making</p> <p>10 responsibility with respect to that issue?</p> <p>11 A I discussed this with BLET legal counsel. I</p> <p>12 never sought a date or time frame or --</p> <p>13 Q Again, I don't want you to get into</p> <p>14 conversations with counsel. Let me direct your</p> <p>15 attention to paragraph 15 of the petition. Do you see</p> <p>16 that paragraph incorporates a quote from your</p> <p>17 September 1 letter, correct?</p> <p>18 A Yes.</p> <p>19 Q And there is a reference there to your</p> <p>20 language that the carrier does not have the right nor</p> <p>21 the authority to parcel out portions of this award. Do</p> <p>22 you see that?</p> <p>23 A Yes.</p> <p>24 Q Is it your view that the carrier would have</p> <p>25 the right to implement only a portion of an award if</p> | <p>1 17A.</p> <p>2 Q What sort of E-mail system do you use?</p> <p>3 What's the provider?</p> <p>4 A We have got a web post and an E-mail server</p> <p>5 that we have got E-mail addresses identified with.</p> <p>6 Once they are downloaded to our Outlook, they are</p> <p>7 deleted from that server.</p> <p>8 Q And that's something that's provided by the</p> <p>9 union?</p> <p>10 A Well, I guess it would be, yes. The cost for</p> <p>11 that server, yes, is provided by the organization. It</p> <p>12 is not an organizational website.</p> <p>13 Q So the idea is that if you open an E-mail --</p> <p>14 your understanding is if you open an E-mail, it's</p> <p>15 downloaded to your computer and then disappears from</p> <p>16 the server?</p> <p>17 A It is deleted from the server because we are</p> <p>18 just allotted certain space on that server.</p> <p>19 Q Okay. And what is your practice with respect</p> <p>20 to E-mails that you download? How long do you retain</p> <p>21 them?</p> <p>22 A I don't know that we have ever disposed of</p> <p>23 any. Some are archived. But I am not fully adept to</p> <p>24 the Microsoft program. I don't know exactly how it</p> <p>25 works.</p>  |

19 (Pages 70 to 73)

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| <p>1 Q I understand that. Have you sought any<br/>2 technical assistance in looking for E-mails that might<br/>3 pertain to this issue?<br/>4 A No.<br/>5 Q Are you aware of any documents in your files<br/>6 that relate to this issue other than the ones that we<br/>7 have looked at today?<br/>8 A I have tried to accommodate with every file<br/>9 that I could find.<br/>10 MR. MUNRO: All right. Let's take a<br/>11 five-minute break and talk to my colleagues.<br/>12 (A recess was held.)<br/>13 MR. MUNRO: I have no further questions.<br/>14 MR. WOLLY: I would like to ask you a couple<br/>15 of questions, Mr. Gibbons.<br/>16 EXAMINATION BY COUNSEL FOR THE BROTHERHOOD OF<br/>17 LOCOMOTIVE ENGINEERS AND TRAINMEN<br/>18 BY MR. WOLLY:<br/>19 Q Let me show you Exhibit 5. Mr. Munro asked<br/>20 you some questions about the second paragraph of<br/>21 Exhibit 5, specifically the sentence that reads,<br/>22 Eventually Rick and Steve convinced me that we could go<br/>23 forward with the allocations while leaving the<br/>24 operational implementation until the UTU 17A was<br/>25 reached.</p> | <p>1 with the allocations while leaving the operational<br/>2 implementation until such time as the UTU 17A was<br/>3 reached?<br/>4 A No.<br/>5 Q Have you ever taken the position with BNSF<br/>6 that it could go forward with only part of Implementing<br/>7 Agreement 17A?<br/>8 A No.<br/>9 Q Mr. Munro asked you questions about<br/>10 Mr. Bell's testimony regarding Mr. Bell's belief that<br/>11 it was possible to implement Article 3 and not the<br/>12 other parts of Implementing Agreement 17A because<br/>13 Article 3 is distinct from train operations. Do you<br/>14 recall that?<br/>15 A Yes.<br/>16 Q And Mr. Munro asked you if you agreed with<br/>17 Mr. Bell's position on that. Do you recall that?<br/>18 A Yes.<br/>19 Q And I believe you testified that you agreed<br/>20 the two are distinct. Can you explain can you explain<br/>21 for us what you meant when you said that?<br/>22 A They are distinct inasmuch as the facets<br/>23 within the railroad operation, but they are complete<br/>24 within the award.<br/>25 Q Did you agree with Mr. Bell that the railroad</p> |
| Page 75   | Page 77  |
| <p>1 Do you see that sentence?<br/>2 A Yes.<br/>3 Q And I believe he asked you whether or not<br/>4 that was an accurate characterization, and you<br/>5 testified yes. Do you recall that testimony?<br/>6 A Yes.<br/>7 Q What do you believe that's an accurate<br/>8 characterization of?<br/>9 A Of the message or the scribe of this E-mail<br/>10 of what his impression of the situation was.<br/>11 Q Mr. Bell?<br/>12 A Yes.<br/>13 Q Is there anything that you did that you think<br/>14 could have convinced him that you had agreed to go<br/>15 forward with the allocations while leaving the<br/>16 operational implementation until the UTU 17A was<br/>17 reached?<br/>18 A No.<br/>19 Q Is there any statement that you believe you<br/>20 made to him that might lead him to believe you were<br/>21 consenting to that?<br/>22 A Repeat that.<br/>23 Q Is there any statement that you recall you<br/>24 made to Mr. Bell that could lead him to believe that<br/>25 you were consenting to the railroad's going forward</p>   | <p>1 is entitled to implement Article 3 but not the other<br/>2 parts based on that distinction?<br/>3 A No.<br/>4 Q Did you ever tell Mr. Bell anything to the<br/>5 contrary?<br/>6 A No.<br/>7 MR. WOLLY: That's all I have.<br/>8 MR. MUNRO: Let me ask you one brief<br/>9 follow-up to that, Mr. Gibbons.<br/>10 FURTHER EXAMINATION BY COUNSEL FOR<br/>11 THE BNSF RAILWAY COMPANY<br/>12 BY MR. MUNRO:<br/>13 Q With respect to the statement in Exhibit 5,<br/>14 particularly Mr. Bell's assertion that Rick and Steve<br/>15 convinced me that we could go forward the allocations,<br/>16 are you now saying that that didn't happen; you didn't<br/>17 try to convince him of that?<br/>18 A No.<br/>19 Q If that's an inaccurate statement that's not,<br/>20 in fact, true, why didn't you respond to this E-mail?<br/>21 Why didn't you say to Wendell that never happened?<br/>22 A I can't answer that.<br/>23 MR. MUNRO: I have nothing further.<br/>24 MR. WOLLY: Okay. Thank you.<br/>25 (At 3:03 p.m., the deposition was concluded.)</p>  |

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AFFIDAVIT OF DEPONENT

I have read the foregoing deposition, which contains a correct transcription of the answers given by me to the questions therein recorded, except as to errors which may be indicated on any attached errata sheet.

RICHARD C. GIBBONS

Subscribed and sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_.

Notary Public

My Commission Expires: \_\_\_\_\_, 20\_\_\_\_

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|---|---|---|---|---|
| <b>A</b>  | <b>affairs</b> 59:11<br>60:3  | 30:5 46:20<br>47:2,9 56:7<br>69:5,11,19   | <b>APPEARAN...</b><br>2:1   | <b>assertion</b> 46:15<br>77:14   |
| <b>ability</b> 5:9 26:24  | <b>AFFIDAVIT</b><br>78:1  | <b>agrees</b> 72:6  | <b>appears</b> 58:5   | <b>asserts</b> 46:10  |
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4 In the Matter of: \_\_\_\_\_

5 STB [I.C.C.] Finance Docket No. 32549 :

7 BURLINGTON NORTHERN, INC. - CONTROL AND :

8 MERGER - SANTA FE PAC. CORP. & ATCHISON,:

9 TOPEKA & SANTA FE RY. CO. :

10 - - - - - X

11 Washington, D.C.

12 Wednesday, January 18, 2006

13

Deposition of PATRICK J. WILLIAMS, called for examination by counsel for the BNSF Railway Company in the above-entitled matter, pursuant to notice, the witness being duly sworn by CARLA L. ANDREWS, a Notary Public in and for the District of Columbia taken at the offices of Goodwin, Procter, LLP, 901 New York Avenue, N.W., Washington, D.C. 20001, at 3:08 p.m., Wednesday, January 18, 2006, and the proceedings being taken down by Stenotype by CARLA L. ANDREWS and transcribed under her direction.

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| <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the BNSF Railway Company:</p> <p>4 DONALD J. MUNRO, ESQ:</p> <p>5 Goodwin, Procter, LLP</p> <p>6 901 New York Avenue, N.W.</p> <p>7 Washington, D.C. 20001</p> <p>8 (202) 346-4000</p> <p>9</p> <p>10 On behalf of the Brotherhood of Locomotive Engineers</p> <p>11 and Trainmen:</p> <p>12 MICHAEL S. WOLLY, ESQ.</p> <p>13 Zwerdling, Paul, Kahn &amp; Wolly, P.C.</p> <p>14 1025 Connecticut Avenue, N.W.</p> <p>15 Suite 712</p> <p>16 Washington, D.C. 20036-5420</p> <p>17 (202) 357-5000</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 WENDELL BELL</p> <p>21 RICHARD C. GIBBONS</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1 P-R-O-C-E-E-D-I-N-G-S</p> <p>2 Thereupon,</p> <p>3 PATRICK J. WILLIAMS</p> <p>4 was called as a witness and, after being duly sworn by</p> <p>5 the notary, was examined and testified as follows:</p> <p>6 EXAMINATION BY COUNSEL FOR</p> <p>7 THE BNSF RAILWAY COMPANY</p> <p>8 BY MR. MUNRO:</p> <p>9 Q Could you state your name for the record,</p> <p>10 please?</p> <p>11 A Patrick J. Williams.</p> <p>12 Q By whom are you employed, Mr. Williams?</p> <p>13 A I am employed by the BLET.</p> <p>14 Q What is your position?</p> <p>15 A I am the general chairman on the former</p> <p>16 Atchison, Topeka, and Sante Fee part of the BNSF.</p> <p>17 Q How long have you had that position?</p> <p>18 A Since October of 2002.</p> <p>19 Q Did you hold a position prior to that with</p> <p>20 the BLET?</p> <p>21 A Yes. I was the vice general chairman for the</p> <p>22 Santa Fe Committee from March of 1997.</p> <p>23 Q Same jurisdiction?</p> <p>24 A Yes, sir.</p> <p>25 Q And are you familiar with Implementing</p>   |
| Page 3  | Page 5  |
| <p>1 C-O-N-T-E-N-T-S</p> <p>2 WITNESS EXAMINATION BY COUNSEL FOR</p> <p>3 PATRICK J. WILLIAMS BNSF RAILWAY COMPANY</p> <p>4 By Mr. Munro 4</p> <p>5</p> <p>6 E-X-H-I-B-I-T-S</p> <p>7 NO. IDENT.</p> <p>8 Exhibit No. 23..... 26</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   | <p>1 Agreement 17A?</p> <p>2 A Yes, sir.</p> <p>3 Q Were you involved in any way in the</p> <p>4 negotiation of that agreement?</p> <p>5 A Yes, I was.</p> <p>6 Q Did you attend the bargaining session?</p> <p>7 A Yes, I did.</p> <p>8 Q Did anyone else from your committee</p> <p>9 participate in the bargaining of that agreement?</p> <p>10 A Yes. My vice chairman and three local</p> <p>11 chairmen were there.</p> <p>12 Q Do you remember their names?</p> <p>13 A My vice chairman was Mark Madden. A local</p> <p>14 chairman out of Ark City, Jim Hagar. A local chairman</p> <p>15 out of Oklahoma City John Salsbury. And my other local</p> <p>16 chairman out of Gainesville was Mike Bond.</p> <p>17 Q Let's take out 17A and take a look at it.</p> <p>18 Take a look at what has been previously marked as</p> <p>19 Exhibit 11 and tell me if you recognize that document.</p> <p>20 A Yeah. It is the arbitrated award from</p> <p>21 Referee O'Brien and the imposed Implementing Agreement</p> <p>22 17A.</p> <p>23 Q Now, the agreement that's attached to it,</p> <p>24 this is the agreement that you participated in</p> <p>25 negotiating that we were talking about a minute ago?</p> |

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1 A Yes, sir.  
 2 Q Do you recall any discussion during those  
 3 negotiations about the language that appears on page  
 4 four of 17A under Article 4, Section Three?  
 5 A No, sir.  
 6 Q You don't recall any discussion one way or  
 7 the other about that?  
 8 A No, sir.  
 9 Q Do you have any recollection of where that  
 10 language came from?  
 11 A I have seen it in other agreements, but I  
 12 don't know where it came from.  
 13 Q You have seen that same provision?  
 14 A Yes, sir.  
 15 Q Do you know off the top of your head what  
 16 agreements those were?  
 17 A It was some other implementing agreements. I  
 18 don't remember the numbers, but I just remember seeing  
 19 it.  
 20 Q What's your understanding of what that  
 21 language means?  
 22 A Is that, you know, when a carrier serves a  
 23 five-day notice on me, that five days from today they  
 24 are going to implement this agreement is what it means  
 25 to me.

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1 Q Do you have any understanding about what it  
 2 means with respect to when the carrier has to serve  
 3 that notice?  
 4 A Whenever they get around to it, I guess.  
 5 Q Do you have any familiarity with Implementing  
 6 Agreement 17?  
 7 A I have read it and I have seen it.  
 8 Q I apologize, but we will have to dig that one  
 9 out, too. Give me that one back, and I will try to  
 10 keep these organized. Take a look at what has been  
 11 marked previously as Exhibit 13A, and tell me if you  
 12 know what that is?  
 13 A Yes, I recognize it.  
 14 Q What is it?  
 15 A This is Implementing Agreement 17.  
 16 Q Okay. Now, if you turn to page five of this  
 17 one and look at Article 5, Section 3. Do you see the  
 18 language there?  
 19 A Yes, sir.  
 20 Q That's the same as the language from 17A,  
 21 correct?  
 22 A Correct.  
 23 Q Did you participate in the negotiation of  
 24 this agreement?  
 25 A No, sir.

Page 8

1 Q Do you have any idea where the language in  
 2 this agreement came from?  
 3 A It was negotiated with my predecessor former  
 4 General Chairman Mullen, Wendell Bell, and Rick's  
 5 predecessor Tim Murphy is how they came up with this  
 6 Imp. 17.  
 7 Q I'm sorry. You said your predecessor was  
 8 John?  
 9 A Mullen.  
 10 Q Did you ever have a conversation with  
 11 Mr. Mullen about this language that talks about when  
 12 the agreement becomes effective?  
 13 A No, sir.  
 14 Q Have you ever seen any other implementing  
 15 agreements other than 17 that have that same language?  
 16 A Probably, but I don't remember right off the  
 17 top of my head what they are.  
 18 Q You mean you think you have seen others?  
 19 A Yes.  
 20 Q Is it a fair statement that there are a  
 21 number of agreements that contain such language out  
 22 there on the railroad?  
 23 A Well, I would say that there is a few that I  
 24 know about, yes.  
 25 Q In your experience, does the carrier -- does

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1 the carrier sometimes wait to implement one of these  
 2 agreements? Is there sometimes a delay between when it  
 3 is executed and when it is implemented?  
 4 A Yes, sir.  
 5 Q Any agreements that you recall in particular  
 6 where that's happened?  
 7 A Yeah. A couple that were on my property,  
 8 yes.  
 9 Q Which ones?  
 10 A The Concordia run-through, which would be  
 11 Implementing Agreement No. 11, plus an arbitrated award  
 12 on the Kansas to Oak City to Fort Worth to Temple, ID.  
 13 The carrier has not done anything with that.  
 14 Q Is that the one that was put into place in  
 15 July of 2005?  
 16 A Yes, sir.  
 17 Q Do you understand why nothing has been done  
 18 with that one?  
 19 A Because UTU doesn't have the award yet. They  
 20 drug their feet.  
 21 Q Do you understand what the current status of  
 22 the UTU agreement is?  
 23 A They have been to the board. They are just  
 24 waiting for the award.  
 25 Q Have you ever had a dispute with the carrier

| Page 10   | Page 12  |
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| <p>1 about the delay in implementation?</p> <p>2 A With turning in time claims. Would that</p> <p>3 be -- and I don't know. That wasn't for the</p> <p>4 implementation. It was just because we didn't think</p> <p>5 they had a right to do it. I can't remember any</p> <p>6 dispute, r.o.</p> <p>7 Q With respect to Implementing Agreement 11,</p> <p>8 what do you recall about the circumstances of the delay</p> <p>9 in implementation of that agreement?</p> <p>10 A The BN side of the agreement ratified the</p> <p>11 Sante Fe side by a division that Newton would not</p> <p>12 ratify. We ended up going to arbitration. I believe</p> <p>13 Bob O'Brien was the referee on that one, too. He found</p> <p>14 in favor of the carrier and imposed Implementing</p> <p>15 Agreement No. 11. If I remember correctly, he put a</p> <p>16 time limit on the time that the carrier had to</p> <p>17 implement that thing. It was something like a year and</p> <p>18 ten days from the date he signed the award. That to</p> <p>19 this day has never been implemented, and that was back</p> <p>20 in 1998, I believe.</p> <p>21 Q And do you understand why it has never been</p> <p>22 implemented?</p> <p>23 A Due to operational changes that the carrier</p> <p>24 chose not to.</p> <p>25 Q With respect to 17A, you understand that that</p> | <p>1 would be able to implement that aspect of 17A without</p> <p>2 getting a corresponding agreement with the UTU?</p> <p>3 A You are referring to the operations part to</p> <p>4 where it is not train specific anymore; it is just wide</p> <p>5 open?</p> <p>6 Q Correct.</p> <p>7 A I wouldn't think it would be very practical</p> <p>8 for the carrier, no.</p> <p>9 Q You opposed the 17A back when it was</p> <p>10 originally proposed; is that correct?</p> <p>11 A Yes, I did.</p> <p>12 Q And what were your reasons for that?</p> <p>13 A Well, mainly is that we -- I mean, me and my</p> <p>14 local chairmen as a committee, we had no documentation</p> <p>15 to prove the carrier and Rick's committee's</p> <p>16 documentation right, wrong, or otherwise. When I</p> <p>17 requested, you know, information to show, you know, are</p> <p>18 there figures right, wrong, or otherwise, I was told</p> <p>19 that the Sante Fe didn't keep records. And so my whole</p> <p>20 thing was that I challenged the carrier's figures on</p> <p>21 the number of trains that the Frisco Committee lost.</p> <p>22 And we made a stand on that.</p> <p>23 Q Did Implementing Agreement 17A go up for</p> <p>24 ratification?</p> <p>25 A Yes, it did.</p>   |
| Page 11   | Page 13  |
| <p>1 agreement has not been -- would you agree that that</p> <p>2 agreement has not been fully implemented as of today?</p> <p>3 A Yes, sir.</p> <p>4 Q What do you understand the carrier's reasons</p> <p>5 for refusing to do so are?</p> <p>6 A Well, I understand that their reasoning from</p> <p>7 reading the correspondence and from talking to Wendell</p> <p>8 is because they don't have the agreement or an</p> <p>9 arbitrated award with the trainmen of the UTU side to</p> <p>10 go ahead and implement the full 17A.</p> <p>11 Q Do you understand -- what would you say the</p> <p>12 practical consequences would be of implementing BLET</p> <p>13 17A without having a UTU matching agreement?</p> <p>14 A It would require the trading of a crew member</p> <p>15 at a location probably to Gainesville, if I was</p> <p>16 guessing.</p> <p>17 Q One of the elements of 17A is that it</p> <p>18 eliminates train specific routing, correct?</p> <p>19 A Yes, it does.</p> <p>20 Q Without a corresponding -- assume for the</p> <p>21 moment that the current parallel to Implementing</p> <p>22 Agreement 17 with the UTU also has that train specific</p> <p>23 designation.</p> <p>24 A Okay.</p> <p>25 Q If that's the case, do you think the carrier</p>  | <p>1 Q And it was voted down?</p> <p>2 A Yes, it was.</p> <p>3 Q Do you know anything about the details of</p> <p>4 that ratification vote -- who voted against it?</p> <p>5 A All three of the effective local chairman's</p> <p>6 divisions voted against it.</p> <p>7 Q In your view, does your committee get</p> <p>8 anything out of 17A?</p> <p>9 A After a point we would realize some equities</p> <p>10 in the Frisco pool from Oklahoma City to Tulsa. Other</p> <p>11 than that, we were pretty much at a loss.</p> <p>12 Q Have you seen anything since the arbitration</p> <p>13 decision to convince you that 17A is, in fact,</p> <p>14 necessary today?</p> <p>15 A Other than the fact that I understand what</p> <p>16 Rick's position is and the fact that, you know, they --</p> <p>17 without 17A they don't realize any equity or anything</p> <p>18 that they -- you know, they say they lost this much</p> <p>19 work, and I believe that he has lost some work. Let's</p> <p>20 put it that way.</p> <p>21 Q You said earlier that you had never seen</p> <p>22 figures as to how much work had actually been lost.</p> <p>23 Have you since seen any such figures?</p> <p>24 A No. I mean, Wendell told me from the records</p> <p>25 that they had that they pulled out of whatever compute</p> |



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1 system they had, that the BN used to run 10 trains a  
 2 day or 10 trains a week or whatever it was back in  
 3 those days. And Rick says he has got six boxes of  
 4 train information that shows the number of trains that  
 5 they used to run over the Madill or the Creek Sub, I  
 6 guess they call it.  
 7 Q You heard testimony earlier today about  
 8 recent changes in traffic patterns or where traffic is  
 9 moving back off the Red Rock to the Madill line?  
 10 A Correct.  
 11 Q Do you agree that that is, in fact,  
 12 happening?  
 13 A Yes, it is.  
 14 Q Does that migration of traffic in any way  
 15 affect your views on whether 17A remains a good idea or  
 16 not?  
 17 A Most assuredly.  
 18 Q And how does it change your views?  
 19 A Well, I called Wendell, I guess it was last  
 20 week during the end of the week, I guess. And I told  
 21 him that I had heard that they moved all the traffic  
 22 back over to the creek that the BN used to run over the  
 23 creek, plus a few extras. And I asked him if my people  
 24 were going to be allowed to follow the new trains that  
 25 are running over there and if he was going to pull 17A

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1 down. And his response was that this was the first he  
 2 heard of it; he was going to have to go talk to the  
 3 operations people to find out what was going on.  
 4 Q Have you heard anything about it since then?  
 5 A No, sir.  
 6 Q Is it a fair characterization of your  
 7 position to say that you would prefer that 17A just not  
 8 be implemented at all that it just be scrapped?  
 9 A Yes, sir.  
 10 Q Did you hear Mr. Gibbons testify earlier  
 11 today about a local arrangement with respect to crew  
 12 changes in the Perry Black Bear area?  
 13 A Yes.  
 14 Q Do you know anything about that?  
 15 A I know that that tends to affect my crews,  
 16 also.  
 17 Q In what way?  
 18 A Well, instead of being stuck out there in the  
 19 middle of nowhere that they are able to pull up and  
 20 change crews with an Oklahoma City to Tulsa crew right  
 21 in Oklahoma City and that, you know, they have not only  
 22 got shelter there, but there is usually a taxi  
 23 available right there to take them on to the distant  
 24 terminal. So it does benefit my crews that they do  
 25 change in Oklahoma City.

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1 Q Do you have any knowledge of how that  
 2 agreement came about?  
 3 A I think it was pretty much just a verbal  
 4 understanding between the parties.  
 5 Q Do you know who created that verbal  
 6 understanding?  
 7 A I think we just sort of all agreed that it  
 8 would be beneficial. I think the local chairmen talked  
 9 to the local carrier officers. And they didn't have a  
 10 problem with it, so I didn't.  
 11 Q Do you recall that BNSF went ahead with a  
 12 partial implementation of 17A back in August of 2004?  
 13 A Yes, I do.  
 14 Q And do you recall that the portion of 17A  
 15 that was implemented was the Article 3 provisions with  
 16 respect to pool allocations?  
 17 A Yes, I do.  
 18 Q Do you know anything about how that came  
 19 about?  
 20 A What do you mean? How it was decided to put  
 21 it in or the pool allocations?  
 22 Q Do you know anything about how it came to be  
 23 that only the pool allocations were implemented at that  
 24 time?  
 25 A Well, only from what Mr. Bell told me and

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1 that he did that because of Rick and Speagle's  
 2 insistence.  
 3 Q Around the time that that happened, did  
 4 Wendell call you to tell you he was doing that?  
 5 A No. He sent me a little letter that said  
 6 that he is reserving the five-day notice to implement.  
 7 Q Let me see if I can find that. Let me show  
 8 you Exhibit 17 and ask you if that's what you were  
 9 referring to a minute ago?  
 10 A Yes, sir.  
 11 Q And you recall receiving that notice from  
 12 Mr. Bell?  
 13 A Yes, I do.  
 14 Q Do you recall having a phone conversation  
 15 with him on that day or right around then where he  
 16 called to say, Hey, I just want to let you know I am  
 17 going to put the allocations into effect?  
 18 A I believe it was me that called him wanting  
 19 to know, you know, how he could just put part of this  
 20 in there but, yes, I do.  
 21 Q And do you recall what he said in response to  
 22 your phone inquiry?  
 23 A That he had talked to Operations and that,  
 24 you know, due to the fact that they didn't have the UTU  
 25 side that they were just incapable or the Operations

5 (Pages 14 to 17)

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| <p style="text-align: right;">Page 18</p> <p>1 people refused to go ahead and put the whole thing in<br/>2 for one side without the other. But, you know, that<br/>3 this would allow Rick's people to regain some lost<br/>4 equity that they had lost over the years type thing by<br/>5 at least giving them the allocations in my pool.<br/>6 Q Did he say anything in that conversation<br/>7 about requests from Rick or Steve about doing that?<br/>8 A I don't remember right offhand whether he<br/>9 mentioned it or not. I don't know.<br/>10 Q Do you remember saying anything to Wendell in<br/>11 response to statements about why he was doing this? Do<br/>12 you remember saying anything like, You have got to do<br/>13 what you have got to do?<br/>14 A I am usually not one for saying you have got<br/>15 to do what you have got to do, especially when I am<br/>16 raising Cain. But I think that my question to Wendell<br/>17 was, you know, how can you only put part of this in.<br/>18 And I think his explanation was is that, well, this is<br/>19 the Operations part over here; this is the allocation<br/>20 part here and that, you know, he had a right to do so<br/>21 by picking and choosing. And I told him that I didn't<br/>22 believe that the carrier had a right to cherry-pick any<br/>23 kind of an agreement and just put in the pieces they<br/>24 liked and the rest of us sitting around there holding<br/>25 the bag.</p> | <p style="text-align: right;">Page 20</p> <p>1 Q So it is really just the partial<br/>2 implementation that you object to with respect to 17A?<br/>3 A You are correct.<br/>4 Q Have you ever talked to Steve Speagle about<br/>5 the partial implementation?<br/>6 A No.<br/>7 Q Are you aware that Wendell Bell asserts that<br/>8 it was Speagle who called him and asked him to do it?<br/>9 A By his testimony, yes.<br/>10 Q Did you know that that was Mr. Bell's<br/>11 assertion prior to today?<br/>12 A I don't remember if Wendell mentioned that,<br/>13 you know, in the number of times that we raised Cain<br/>14 about this or not. But he probably did and I just<br/>15 don't remember.<br/>16 Q Let me show you what has been previously<br/>17 marked as Exhibit 5. Let me know when you are ready?<br/>18 A Okay.<br/>19 Q Do you recognize that document?<br/>20 A Yes, I do.<br/>21 Q Do you remember sending the message there<br/>22 that's in the middle of the document?<br/>23 A Yes, I do.<br/>24 Q And do you recall receiving Wendell's reply<br/>25 around about November 10?</p>   |
| <p style="text-align: right;">Page 19</p> <p>1 Q Do you find the allocations aspect of 17A<br/>2 less troubling than the other aspects of it?<br/>3 A Could you clarify that a little bit for me?<br/>4 Q Let me try. Did the allocations provisions<br/>5 in 17A -- well, let me start over. You said earlier<br/>6 that you didn't like 17A. You just assume it not be<br/>7 put into effect, correct?<br/>8 A Correct.<br/>9 Q What particularly are the problems for your<br/>10 members with respect to 17A? What aspects are the most<br/>11 troubling to you?<br/>12 A One is the loss of jobs that my members used<br/>13 to protect in those pools. When Wendell imposed that<br/>14 Article 3, he gave Rick's people rights to bid in my<br/>15 pool. And, you know, they not only have, you know,<br/>16 availability now to, you know, their order of<br/>17 selection, so to speak, but they have the rights to bid<br/>18 on one of the Sante Fe allocated jobs if no senior<br/>19 Sante Fe man bids it in.<br/>20 Q If the carrier said to you, okay, you don't<br/>21 want us to implement partially; we will pull down the<br/>22 implementation of Article 3, the allocation piece, and<br/>23 just put the whole thing in abeyance, would that be<br/>24 satisfactory to you?<br/>25 A That's what I have asked for all along, yes.</p>  | <p style="text-align: right;">Page 21</p> <p>1 A I read it, yes.<br/>2 Q Do you see a statement there about how Rick<br/>3 and Steve convinced him that he could do the<br/>4 allocations of limitation?<br/>5 A Yes.<br/>6 Q Did you raise any questions with Mr. Speagle<br/>7 at that time about that assertion by Wendell?<br/>8 A I don't remember whether I did or not.<br/>9 Q Did you raise any questions with Mr. Gibbons?<br/>10 A I don't believe that I called Rick about<br/>11 this, either. I think I raised Cain with Wendell. He<br/>12 happened to be the one that was catching it all.<br/>13 Q Did you call Wendell in response to that<br/>14 E-mail?<br/>15 A I think I did call him and mention something<br/>16 to the fact that, you know, how can Rick and Steve make<br/>17 the decision and leave me standing out here. This<br/>18 thing affects me and my people.<br/>19 Q What's your view of your official<br/>20 relationship to Mr. Speagle?<br/>21 A Steve is assigned by the National Division to<br/>22 be the national representative for the BNSF. His main<br/>23 job function is if we go to a negotiating meeting to<br/>24 give advice, to maintain order, keep the general<br/>25 chairmen from fighting amongst themselves. Mainly to</p> |

| Page 22  | Page 24   |
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| <p>1 try to keep us out of trouble as far as violating<br/>2 national law.<br/>3 MR. WOLLY: What did you say? National law?<br/>4 THE WITNESS: National constitutional stuff<br/>5 with the BLET's.<br/>6 BY MR. MUNRO:<br/>7 Q Does the vice president ever speak for the<br/>8 union in negotiations with the railroad?<br/>9 A He may answer a question, if asked. I don't<br/>10 think he is speaking for the union. The only one that<br/>11 really speaks for the union would be Don Hoss.<br/>12 Q What I mean by that -- let me just try to<br/>13 clarify. Let's say you are in a negotiation about a<br/>14 particular issue, and there is you and other general<br/>15 chairmen there and Mr. Speagle is there as well.<br/>16 Does Mr. Speagle in his role as vice<br/>17 president ever speak for the group of you as a whole in<br/>18 dealing with the carrier in that sort of setting?<br/>19 A If we all have our little meeting and<br/>20 designate Steve to be the spokesperson, yes, he can.<br/>21 Q Has that ever happened?<br/>22 A Yes, it has.<br/>23 Q Is it Mr. Speagle's role to mediate disputes<br/>24 between general chairmen?<br/>25 A If he can, yes.</p>   | <p>1 A I took care of my side. Rick took care of<br/>2 his side.<br/>3 Q And did you have any conversations with<br/>4 Mr. Speagle about Implementing Agreement 17A during the<br/>5 process of ratification and then arbitration?<br/>6 A Other than the fact that I just told him that<br/>7 it didn't ratify that, you know, we ended up in<br/>8 arbitration. I wrote my own submission, and I argued<br/>9 my own case in front of the referee.<br/>10 Q And did Mr. Speagle participate in that<br/>11 process? Did he review either committees' submissions<br/>12 or any other way participate?<br/>13 A He had copies of them. And whether he<br/>14 reviewed them or not, I don't know. He did bring out a<br/>15 few points that he thought important after Rick had<br/>16 given our views on this thing. He did have a couple<br/>17 things to clarify for the referee.<br/>18 Q So he spoke to the arbitrator?<br/>19 A Yes. While we were all in the room, yes. He<br/>20 is the board member.<br/>21 Q Okay. He was the union's representative on<br/>22 the board?<br/>23 A Yes.<br/>24 Q What do you recall about the carrier's agenda<br/>25 with respect to 17A? What was it that the carrier was</p>                   |
| Page 23  | Page 25   |
| <p>1 Q What was Mr. Speagle's role in the<br/>2 negotiation of Implementing Agreement 17A?<br/>3 A Steve, I think when we had the initial<br/>4 meeting in Oklahoma City, was mainly just a viewer. I<br/>5 don't remember him really putting in his two cents'<br/>6 worth. I mean, the arguments, I guess, you would call<br/>7 them or discussions that we had between Rick and his<br/>8 local chairmen and me and my local chairmen were<br/>9 excited, let's put that it way. They got a little<br/>10 heated every once in and a while. I think Steve's role<br/>11 there was to advise that -- you know, I think I<br/>12 depended on Steve at the time. That was my, you know,<br/>13 first baptism under fire, so to speak, as the general<br/>14 chairman. And I asked him questions to keep myself out<br/>15 of a jackpot. But I think that, you know, we beat this<br/>16 thing to death up and backwards and finally came out<br/>17 with what we pretty much agreed was an Even Steven-type<br/>18 thing that, you know, Rick would get this much and<br/>19 that, you know, we would maintain the status quo over<br/>20 here.<br/>21 Q Aside from the discussions that went on<br/>22 between the two general committees during those<br/>23 sessions, when the carrier was in the room and you were<br/>24 dealing with the carrier, who handled that? Was it<br/>25 you, Mr. Gibbons, Mr. Speagle?</p> | <p>1 trying to get?<br/>2 A Well, my recollection is that Wendell was<br/>3 going to show my local chairman Mr. Hagar a trick, and<br/>4 he pretty much did. We had a local chairman that<br/>5 everything belonged to him, and he wasn't willing to<br/>6 give anything. And needless to say that, you know, he<br/>7 just would not leave well enough alone. He always had<br/>8 to be interrupting and putting in his two cents'<br/>9 worth. And before it was all over, we ended up getting<br/>10 the britches put on us because he just wouldn't stay<br/>11 out of it. And I have never seen a referee before<br/>12 mention a local chairman's name but O'Brien did. And<br/>13 so that part about it, yes, my local chairman and I<br/>14 should have gagged him, but I didn't.<br/>15 Q With respect to the different components of<br/>16 17A, would you agree with me that there is sort of<br/>17 three main parts to it. There is the part that gets<br/>18 rid of the train specific designation?<br/>19 A Yes.<br/>20 Q There is the part that gets rid of the<br/>21 restrictions on what the Frisco people could do on your<br/>22 line?<br/>23 A Correct.<br/>24 Q And then were the allocations?<br/>25 A Correct.</p> |

7 (Pages 22 to 25)

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1 Q What was your impression of which of those  
2 three things was the most important to the carrier?

3 A I figured the most important thing to the  
4 carrier was the ability to have Frisco crews do work on  
5 line.

6 Q And what would be the second priority, then,  
7 as between the remaining two?

8 A Well, I guess it would be a tie. It would be  
9 getting rid of the train specific designations.

10 Q Okay. Do you see that the carrier benefits  
11 in any way from having the allocations put into effect  
12 without putting the rest of 17A into effect?

13 A Not in my opinion, no.  
14 (Exhibit No. 23, marked for identification.)

15 BY MR. MUNRO:

16 Q Mr. Williams, just take a look at this, and  
17 tell me when you are ready.

18 A Okay.

19 Q Could you identify this document for us?

20 A Yes, sir. This was a letter that I wrote to  
21 General Chairman Gibbons responding to a letter that he  
22 sent to Wendell Bell, dated August 4, 2004. And I was  
23 CC'd on that letter. And I took exception to his  
24 allegations in there that I was in cahoots with a  
25 carrier.

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1 Q So your intent in this letter was to respond  
2 to those suggestions?

3 A Yeah. I really took offense at him  
4 insinuating that I had been talking to Wendell to keep  
5 Wendell from implementing 17A. And that was completely  
6 outside the realm of reality. I mean, I never wanted  
7 17A put in, so I definitely wasn't in favor of putting  
8 it in. But I wasn't calling Wendell asking him not to  
9 put it in, either.

10 Q So you stand by your assertions in this  
11 letter that you didn't talk to Wendell or anyone else  
12 about delaying the implementation of 17A?

13 A No, I did not.

14 Q Did you receive any reaction from Mr. Gibbons  
15 to this letter?

16 A Not that I remember.

17 Q Did you subsequently have any conversations  
18 with Mr. Gibbons about the delayed implementation of  
19 17A, again, aside from any conversations you may have  
20 had in the presence of your counsel?

21 A I don't think so because it was a pretty  
22 touchy subject between all of us. So I think we sort  
23 of just let bygones be bygones on the situation.

24 Q After Wendell sent his notice that purported  
25 to partially implement 17A, you testified earlier that

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1 you recollect that you called him and said, you know,  
2 hey, what are you doing?

3 A Yes.

4 Q Did you follow-up with him, either by phone  
5 or in writing, about that after that?

6 A Oh, I am sure that we had some phone calls  
7 after that. I don't remember ever putting anything in  
8 writing to that. I just remember that every time that  
9 Mr. Hagar would crawl up my backside, I would call  
10 Wendell and crawl up his because this thing created  
11 lots of havoc out there. And I always caught the brunt  
12 of it, so I passed it on to Wendell.

13 Q So you were prompted by complaints from you  
14 general chair -- from your local chair?

15 A Biggest part, yes.

16 Q Do you recollect that the allocations did, in  
17 fact, go into effect not too long after Wendell's  
18 notice on August 12?

19 A Sometime toward the end of the month, if I  
20 remember correctly, yes.

21 Q Is it fair to say that you didn't try to  
22 impede that from happening in any way?

23 A I think the only thing that I did was contact  
24 Wendell and tell him that I had heard that he was going  
25 to put in a training board. And I said on the Sante Fe

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1 side we have no such thing as a training board. You  
2 know, if you are going to put these guys on there then,  
3 you know, they could be put on a turn. And then you  
4 call a Sante Fe engineer with them until, you know,  
5 they are qualified to pilot.

6 Q So you had a conversation with him about  
7 having pilots on?

8 A Yes.

9 Q And how was that resolved?

10 A He put it in that there would be pilots.

11 Q Was that an adequate resolution of that  
12 particular issue from your perspective?

13 A Yes.

14 Q Did you do anything else with respect to the  
15 partial implementation of 17A at that time, at the time  
16 that it went into effect?

17 A Other than raise Cain about it, I think I  
18 contacted the international ones and told them that I  
19 didn't think that this was right. But other than that,  
20 I didn't put anything in writing, no.

21 Q What sort of reaction did you get from the  
22 international?

23 A I talked to the in-house counsel up there Tom  
24 Brennan and --

25 Q Don't disclose that.

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|--|---|
| <p>1 MR. WOLLY: You don't have to disclose that.</p> <p>2 BY MR. MUNRO:</p> <p>3 Q Did you participate in any way in the</p> <p>4 decision to go to the STB about this issue?</p> <p>5 A Clarify that for me a little bit.</p> <p>6 Q Well, at some point, the BLET decided to file</p> <p>7 a petition with the STB to seek relief with respect to</p> <p>8 these issues relating to 17A.</p> <p>9 A Okay.</p> <p>10 Q Did you participate in any way in that</p> <p>11 decision to go to the board?</p> <p>12 A Other than register my displeasure that the</p> <p>13 carrier unilaterally just cherry-picked this thing, no.</p> <p>14 Q Is it your understanding that the union and</p> <p>15 the carrier could mutually agree to partially implement</p> <p>16 an agreement?</p> <p>17 A As long as they are mutually agreed, they</p> <p>18 could pretty much do anything, yes.</p> <p>19 Q And so the problem that you have with 17A and</p> <p>20 the allocation's implementation is you don't agree that</p> <p>21 there was a mutual decision to do that; is that right?</p> <p>22 A No, because I was never consulted.</p> <p>23 Q And from your perspective, Mr. Speagle cannot</p> <p>24 substitute for you in that regard; is that right?</p> <p>25 A No, he cannot.</p> | <p>1 AFFIDAVIT OF DEPONENT</p> <p>2</p> <p>3 I have read the foregoing deposition, which</p> <p>4 contains a correct transcription of the answers given</p> <p>5 by me to the questions therein recorded, except as to</p> <p>6 errors which may be indicated on any attached errata</p> <p>7 sheet.</p> <p>8</p> <p>9</p> <p>10 <u>PATRICK J. WILLIAMS</u></p> <p>11</p> <p>12 Subscribed and sworn to before me this ____ day</p> <p>13</p> <p>14 of ____, 20__, in ____.</p> <p>15</p> <p>16 Notary Public</p> <p>17</p> <p>18</p> <p>19 My Commission Expires: ____, 20__</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p>Page 31</p> <p>1 Q Have you ever had conversation with Wendell</p> <p>2 about your jurisdiction with respect to BLET issues on</p> <p>3 BSNF, vis-a-vis, Mr. Speagle? In other words, have you</p> <p>4 ever told Wendell, Mr. Speagle can't speak for me; I</p> <p>5 speak for my committee or words to that effect?</p> <p>6 A I don't think the occasion has ever come up</p> <p>7 where I have said that, no.</p> <p>8 MR. MUNRO: Okay. Can I have five minutes?</p> <p>9 I think I am done.</p> <p>10 (A recess was held.)</p> <p>11 MR. MUNRO: I have no further questions.</p> <p>12 Thank you, Mr. Williams.</p> <p>13 MR. WOLLY: I don't have any questions.</p> <p>14 Thank you.</p> <p>15 (At 4:02 p.m., the deposition was concluded.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  |   |

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Page 1

1                   BEFORE THE SURFACE TRANSPORTATION BOARD

2 - - - - - X

3 In the Matter of \_\_\_\_\_ :

4 STB [I.C.C.] Finance Docket No. 32549 :

5

6 BURLINGTON NORTHERN, INC. :

7 - CONTROL AND MERGER -

8 SANTA FE PAC. CORP. & ATCHISON, :

9 TOPEKA & SANTA FE RY. CO.

10 - - - - - X

11 Washington, D.C.

12 Wednesday, February 1, 2006

13 Deposition of STEVEN D. SPEAGLE, a witness

14      herein, called for examination by counsel for BNSF

15     Railway Company in the above-entitled matter,

16 pursuant to notice, the witness being duly sworn by

17 MARY GRACE CASTLEBERRY, a Notary Public in and for

18 the District of Columbia, taken at the offices of

19 Goodwin Procter, 901 New York Avenue, N.W.,

20 Washington, D.C., at 1:00 p.m., Wednesday,

21 February 1, 2006, and the proceedings being taken

22 down by Stenotype by MARY GRACE CASTLEBERRY, RPR, and

23 transcribed under her direction.

24

25

Page 2

## 1 APPEARANCES:

2  
3 On behalf of the BNSF Railway Company:

4 DONALD J. MUNRO, ESQ.

5 JEFF SKINNER, ESQ.

6 Goodwin Procter

7 901 New York Avenue, N.W.

8 Washington, D.C. 20001

9 (202) 346-4000

10  
11 On behalf of the Brotherhood of Locomotive  
12 Engineers and Trainmen:

13 MICHAEL S. WOLLY, ESQ.

14 Zwerdling, Paul, Kahn &amp; Wolly

15 1025 Connecticut Avenue, N.W.

16 Suite 712

17 Washington, D.C. 20036-5420

18 (202) 857-5000  
19  
20  
21  
22  
23  
24  
25

Page 4

## 1 PROCEEDINGS

2 Whereupon,

3 STEVEN D. SPEAGLE,

4 was called as a witness by counsel for BNSF Railway

5 Company, and having been duly sworn by the Notary

6 Public, was examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR BNSF Railway COMPANY

8 BY MR. MUNRO:

9 Q. Good afternoon, Mr. Speagle. My name is

10 Don Munro.

11 A. Good afternoon.

12 Q. I represent BNSF Railway in this matter.

13 Could you please state your name for the

14 record?

15 A. Steven D. Speagle.

16 Q. Mr. Speagle, have you ever been deposed

17 before?

18 A. Yes.

19 Q. I'll just go over the guidelines very

20 quickly, then. I'll ask you questions. I ask you to

21 give me your response to each question. I ask that

22 the responses be verbal rather than shaking your

23 head. If I ask you a question and you don't

24 understand it, please just tell me and I'll try to

25 rephrase. If you need to take a break, just say so

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## 1 CONTENTS

2 WITNESS EXAMINATION BY COUNSEL FOR

3 STEVEN D. SPEAGLE BNSF Railway COMPANY

4 By Mr. Munro 4  
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Page 5

1 and we will.

2 If you need to consult with your counsel,

3 you're free to do so. And as a general rule, I'm not

4 asking you, in any of my questions, to disclose

5 anything that you have discussed with your counsel.

6 Does that all make sense?

7 A. Yes.

8 Q. Could you give us a brief overview of your

9 job history?

10 A. My job history?

11 Q. Yes.

12 A. Yes. October of '64, I hired out in

13 Decatur, Illinois as a switchman for Norfolk Western;

14 in March of '66, I transferred to Brightman; in

15 January of -- that was March of '67, I'm sorry.

16 In January of '68, I transferred to

17 engineer; in 1972, I was promoted to engineer; in

18 1995, I was elected general chairman on the Norfolk

19 Southern Northern lines or the BLE; in 2001, I was

20 elected vice president of the BLE.

21 Q. So you're currently employed by the BLE or  
22 the BLET?

23 A. BLET now, yes.

24 Q. And could you for the record just state

25 who the BLET is, its full name?

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1 A. Brotherhood of Locomotive Engineers and  
2 Trainmen.

3 Q. And is that a division of any larger  
4 union?

5 A. We are now part of the Rail Conference  
6 which is part of the Teamsters organization.

7 Q. Mr. Speagle, could you explain in general  
8 terms the hierarchy of the Union? What are its  
9 various organizational levels or structures?

10 A. On the Local level, you have what they  
11 call a division which is the Local. Most unions call  
12 it the Local. The engineers for some reason call it  
13 a division. You have the Local chairman in the  
14 division that handles the grievances. The Local  
15 chairman of all the railroad property, of the whole  
16 railroad property make up the general committee of  
17 adjustment.

18 Since there has been a lot of mergers, now  
19 there is more than one general committee of  
20 adjustment on each railroad. Above that, then you  
21 have the vice presidents. Then you have the  
22 executive committee which is the secretary/treasurer,  
23 the first vice president and the president.

24 Q. Is there a geographic territory that you  
25 are responsible for?

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1 A. There is a geographic area I'm assigned  
2 to.

3 Q. And what is that?

4 A. I'm assigned to the Burlington Northern  
5 Santa Fe Railroad, I'm assigned to the Pacific Harbor  
6 Lines Railroad, I'm assigned to the Montana Rail Link  
7 Railroad, I'm assigned to the Missouri/North Arkansas  
8 Railroad and I'm assigned on the national wage team.

9 Q. What is the craft or class of employees  
10 that you represent?

11 A. Locomotive engineers and some trainmen.  
12 On the Pacific Harbor Line, we represent the  
13 trainmen, engineers and maintenance of way.

14 Q. For the territory or the properties that  
15 you just described, the ones that you have  
16 responsibility for, how many general committees are  
17 there?

18 A. Four.

19 Q. And how do those four break down?

20 A. They're the four BNSF general committees  
21 and the BNSF Northern lines committee has also the  
22 Montana rail link. The BNSF Santa Fe committee has  
23 the Pacific harbor lines and the BNSF Frisco  
24 committee has the Missouri/North Arkansas.

25 Q. So there is the Northern, the Santa Fe,

Page 8

1 the Frisco. Is there one more BNSF?

2 A. Yes. That's the former -- Austin Morrison  
3 is the general chairman. It's Fort Worth, Denver,  
4 CNS Railroad, I think it is. There might be another  
5 one, a little one in there. I can't remember.

6 Q. What's the division of responsibility  
7 generally speaking between those general committees  
8 of adjustment and the structure above them that you  
9 described, the vice presidents, the executive --

10 A. According to our bylaws, the general  
11 committee has the responsibility of making,  
12 interpreting and enforcing the agreements.

13 Q. And then what's the role of the people  
14 who -- of the national union?

15 A. The national assists the general chairman  
16 and general committees in their roles. They also  
17 have charge of national negotiations for national  
18 agreements.

19 Q. Why are there multiple general committees  
20 on a single railroad?

21 A. Just as I said earlier, they generally  
22 start out as one general committee for each railroad  
23 but as the railroads have merged, then you have --  
24 like with the BNSF, the Northern lines general  
25 committee was the former CB&Q Railroad and they

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1 merged with the Great Northern Railroad and the  
2 Northern Pacific Railroad.

3 Then all them three railroads then merged  
4 with the Frisco so you went from just the one  
5 committee, now you have the Frisco and the Northern  
6 committee. Then they also picked up the Fort Worth  
7 and the -- that was another committee and then the  
8 Santa Fe committee when they merged in '95, I believe  
9 it was, then you got the other committees. So that's  
10 how you get multiple general committees under one  
11 railroad.

12 Q. Why don't the general committees merge  
13 when the railroads merge? In other words, if you had  
14 two railroads, each with its own general committee,  
15 why don't those committees --

16 A. Because they prefer their own.

17 Q. So that's just a matter of choice of the  
18 union?

19 A. Yes, because they have different  
20 responsibilities.

21 Q. There have been some mergers of general  
22 committees over time, is that not true?

23 A. Oh, yes, yes.

24 Q. And who decides whether to merge general  
25 committees or not?

3 (Pages 6 to 9)



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1 MR. WOLLY: I'm going to just impose a  
2 standing objection to inquiries into why the union is  
3 structured the way it is because I don't think it has  
4 any bearing on this proceeding. You can answer the  
5 question.

6 THE WITNESS: The general chairman. The  
7 general committees. Not the general chairman. The  
8 general committees.

9 BY MR. MUNRO:

10 Q. Returning to the structure above the  
11 general committees that you talked about a moment  
12 ago, what are the specific duties of a vice president  
13 such as yourself?

14 A. A vice president does basically what the  
15 president instructs him to do and he's assigned  
16 normally certain general committees and he assists  
17 those general committees in what they want and need.

18 Q. When you say you assist the general  
19 committees, can you be more specific?

20 A. Well, we go in negotiations and usually,  
21 not always, the vice presidents have more experience  
22 so they assist the general chairman in the  
23 negotiations and that sort of thing.

24 Q. As a vice president, do you have the power  
25 to lead a negotiation?

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1 A. On occasion, yes.

2 Q. Can you give me an example?

3 A. If there is a dispute between equity, work  
4 equity or a dispute on members as far as what member  
5 belong to what committee, that sort of thing.

6 Q. Could you describe for me the nature of --  
7 the kinds of contacts that you have with the  
8 carriers' labor relations offices? What is the  
9 nature of your dealings with them?

10 A. Just what I said. I deal with them in  
11 negotiations and discipline hearings. Not hearings.  
12 The arbitration of the hearings.

13 Q. Do you ever call carrier officers to talk  
14 about reaching new agreements?

15 A. Yes.

16 Q. Do you ever call them to talk about  
17 problems that arise with existing agreements?

18 A. Yes.

19 Q. How often would you say that you're in  
20 contact with carrier labor relations offices? Is it  
21 something that happens once in a while or often?

22 A. I would say it's not unusual. It's not  
23 often and it's not once in a while. It's just not  
24 unusual.

25 Q. Does the president of the union have the

Page 11

1 A. If they give me the power, I have it.  
2 They have to specifically request that the president  
3 assign me to do a certain task, whatever it is, and  
4 if they don't request that, then the general  
5 committees maintain that authority themselves.

6 Q. Do you have any power to give instructions  
7 to general chairmen?

8 A. Not instructions. You give them advice  
9 and hope that they take it.

10 Q. If you had to compare your role within the  
11 BLET to the labor relations structure of the  
12 railroads, who would be your counterpart at BNSF?

13 A. I'm not totally familiar with the  
14 structure of BNSF as far as -- I know Fleps is the  
15 vice president. I would say probably Fleps or Milton  
16 Siegele. And I'm not even sure that's an accurate  
17 comparison.

18 Q. Do you ever serve as the union member on  
19 arbitration panels?

20 A. Yes.

21 Q. Is that something that happens common --  
22 is that a common part of your job?

23 A. Yes, it is.

24 Q. Are you ever called upon to broker  
25 disputes between general committees?

Page 13

1 authority to give direction or instruction to general  
2 chairman?

3 A. Only if they're in violation of the bylaws  
4 or if it's something that would be to the detriment  
5 of the BLE. According to our bylaws, that is totally  
6 the jurisdiction of the general committee.

7 Q. I'm sorry, what is?

8 A. The negotiations and that kind of stuff.

9 Q. Are you familiar with an individual at  
10 BNSF named Wendell Bell?

11 A. Yes.

12 Q. Do you ever speak to Mr. Bell in the  
13 course of business?

14 A. Certainly.

15 Q. How often?

16 A. It just depends. If there is something  
17 going on, if there is a negotiation in process, I  
18 could speak to him two or three times a week. If  
19 there is not -- I haven't spoken to him in quite a  
20 while.

21 Q. So it just depends on what's going on?

22 A. Right.

23 Q. What's the nature of your relationship  
24 with Mr. Bell? How would you describe it?

25 A. A business relationship.

| Page 14  | Page 16   |
|--|---|
| <p>1 Q. Is it cordial?</p> <p>2 A. Yes.</p> <p>3 Q. Does Mr. Bell generally treat you with</p> <p>4 respect?</p> <p>5 A. Yes.</p> <p>6 Q. When you've spoken to Mr. Bell in the</p> <p>7 past, have you ever said to him that -- or have you</p> <p>8 ever disavowed any suggestion that you were speaking</p> <p>9 on behalf of the BLET?</p> <p>10 A. I don't understand you.</p> <p>11 Q. Let me try that again. Have you ever said</p> <p>12 to Mr. Bell, look, you understand that I don't have</p> <p>13 authority to say anything on behalf of the union as a</p> <p>14 whole? Have you ever had a discussion with him</p> <p>15 about --</p> <p>16 A. The only reason I would be talking to</p> <p>17 Mr. Bell is because of union business. I mean, I'm</p> <p>18 not sure I understand your question.</p> <p>19 Q. Have you ever had a discussion with</p> <p>20 Mr. Bell about the nature of your authority?</p> <p>21 A. No.</p> <p>22 Q. Have you ever said to him, look, I'm just</p> <p>23 an advisor, it's the general committees that have the</p> <p>24 power to make these decisions? Have you ever had a</p> <p>25 conversation that got into that kind of discussion?</p> | <p>1 be on the negotiating team and they're elected by the</p> <p>2 advisory board and I was one of them.</p> <p>3 Q. You said you are participating?</p> <p>4 A. Yes.</p> <p>5 Q. And how long has that been? How long have</p> <p>6 you been involved in national negotiations?</p> <p>7 A. Last year, I believe.</p> <p>8 Q. Is Mr. Bell involved in those negotiations</p> <p>9 at all, to your knowledge?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. Do you have any idea whether he knows</p> <p>12 whether or not you are a member of the national</p> <p>13 negotiating committee?</p> <p>14 A. I don't know whether he does or not. I</p> <p>15 would think he would but I don't know that for sure.</p> <p>16 Q. You said a minute ago that Mr. Bell's been</p> <p>17 around for a while and he understands what the</p> <p>18 pecking order is. I think those were your words.</p> <p>19 A. Yes.</p> <p>20 Q. What's the basis for that conclusion? Why</p> <p>21 do you believe that to be true?</p> <p>22 A. Well, because Mr. Bell has to go to the</p> <p>23 general chairman if he wants an agreement. He</p> <p>24 doesn't go to the vice presidents. He goes to the</p> <p>25 general chairmen. So I would assume, for as long as</p> |
| Page 15  | Page 17   |
| <p>1 A. I don't recall any specific conversation</p> <p>2 like that, no. Mr. Bell knows where the power is. I</p> <p>3 mean, he's been there for a long time so he knows</p> <p>4 what the order is, the pecking order.</p> <p>5 Q. Have you ever had a conversation with</p> <p>6 Mr. Bell in which you had been given the power to</p> <p>7 bargain on behalf of the union?</p> <p>8 A. The only time I would have that is if</p> <p>9 we're in an arbitration proceeding and I'm the member</p> <p>10 on the board.</p> <p>11 Q. You said a minute ago that if the general</p> <p>12 committees delegated to you the authority, then you</p> <p>13 would be --</p> <p>14 A. Yes.</p> <p>15 Q. And can you recall any circumstance in</p> <p>16 which that's occurred?</p> <p>17 A. No, they have not.</p> <p>18 Q. How many other vice presidents are there?</p> <p>19 A. There are seven other ones.</p> <p>20 Q. So eight total?</p> <p>21 A. Yes.</p> <p>22 Q. And how many of the other vice presidents</p> <p>23 deal with national level negotiations?</p> <p>24 A. There is one other vice president.</p> <p>25 According to our bylaws, two vice presidents have to</p>             | <p>1 he's been around, this is not a new thing. This has</p> <p>2 been in the bylaws for quite some time.</p> <p>3 Q. Mr. Speagle, I'm going to show you a</p> <p>4 document that's previously marked as Exhibit 11 in</p> <p>5 this matter and ask you to just take a look at it.</p> <p>6 Let me know when you've had a chance to identify it</p> <p>7 A. Okay. Yes.</p> <p>8 Q. Could you tell us what it is, if you know,</p> <p>9 please?</p> <p>10 A. This looks like implementing agreement</p> <p>11 17A.</p> <p>12 Q. And this document contains an arbitration</p> <p>13 decision and then attaches the agreement that was</p> <p>14 imposed by the arbitration panel, is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Could you flip to page 4 of the actual</p> <p>17 agreement.</p> <p>18 Do you see in the signatures there, there</p> <p>19 is a signature by the carrier and then there are a</p> <p>20 couple of signatures for general chairmen? Do you</p> <p>21 see those?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Then below that, there is a line that says</p> <p>24 approved and then there is a line for vice president.</p> <p>25 Do you see that?</p>   |

5 (Pages 14 to 17)

| Page 18   | Page 20  |
|---|--|
| <p>1 A. Yes, I do.</p> <p>2 Q. Is that your signature?</p> <p>3 A. No, it's my initials.</p> <p>4 Q. Did you initial that document?</p> <p>5 A. Yes, I did.</p> <p>6 Q. What is the purpose of that additional</p> <p>7 section there, the approved line and then your</p> <p>8 initials?</p> <p>9 A. It is not really necessary. They could do</p> <p>10 that without my initials there at all. A lot of</p> <p>11 times they'll put it there but it's not necessary.</p> <p>12 Q. Have you ever seen that in any other</p> <p>13 document?</p> <p>14 A. Yes, I have.</p> <p>15 Q. Is it fair to say that it's a fairly</p> <p>16 common convention in collective bargaining</p> <p>17 agreements?</p> <p>18 A. Again, it's not uncommon. I'm sure you</p> <p>19 can find other agreements where it's not there. It's</p> <p>20 not uncommon.</p> <p>21 Q. Do you know how that convention came</p> <p>22 about?</p> <p>23 A. No, I do not.</p> <p>24 Q. You say it's not necessary but do you</p> <p>25 understand what the purpose of it is?</p>   | <p>1 Q. Is it fair to say you're generally</p> <p>2 familiar with the terms of that agreement?</p> <p>3 A. Yes.</p> <p>4 Q. Did you participate in any way in the</p> <p>5 negotiation of that agreement?</p> <p>6 A. Yes, I did.</p> <p>7 Q. You said earlier that -- I believe you</p> <p>8 said earlier that you participate in negotiations if</p> <p>9 you are assigned to do so by the president at the</p> <p>10 request of the general chairman. Is that accurate?</p> <p>11 A. Yes, that's fairly accurate.</p> <p>12 Q. Did that occur in this particular</p> <p>13 circumstance?</p> <p>14 A. Yes. The president assigned me to</p> <p>15 Burlington Northern Santa Fe to assist in any way</p> <p>16 they requested, when I was elected vice president.</p> <p>17 So the president didn't assign me to help with 17A</p> <p>18 but he did assign me to help with BNSF negotiations</p> <p>19 Q. I understand did the general chairmen ask</p> <p>20 for your participation?</p> <p>21 A. Yes, they did.</p> <p>22 Q. Did they say anything about why that was?</p> <p>23 A. To flatter myself, I hope they thought I</p> <p>24 could add something to the process.</p> <p>25 Q. That makes sense. Was there any</p>  |
| Page 19   | Page 21  |
| <p>1 A. Not totally.</p> <p>2 Q. Have you yourself signed other agreements</p> <p>3 in that form?</p> <p>4 A. Yes, I have.</p> <p>5 Q. When you were general chairman, did you</p> <p>6 ever have documents that were signed by a vice</p> <p>7 president in addition to yourself?</p> <p>8 A. Some were and some were not, yes.</p> <p>9 Q. Has Mr. Bell ever asked you about why</p> <p>10 you're signing these agreements?</p> <p>11 A. No, he has not.</p> <p>12 Q. Have you ever had a discussion with anyone</p> <p>13 about why you're signing these agreements?</p> <p>14 A. No, I have not.</p> <p>15 Q. Has any general chairman ever objected to</p> <p>16 this format of agreement?</p> <p>17 A. Well, if they object to it, they just</p> <p>18 don't have it on there.</p> <p>19 Q. Has that ever happened -- I mean, in other</p> <p>20 words, has someone actually objected saying, I don't</p> <p>21 want a vice president to sign this?</p> <p>22 A. I don't know if they have or not.</p> <p>23 Q. Have you seen the terms of implementing</p> <p>24 agreement 17A before today?</p> <p>25 A. Oh, yes.</p> | <p>1 suggestion, either express or implicit, at the time</p> <p>2 that they asked you to get involved, that they needed</p> <p>3 you because there was a conflict between the two</p> <p>4 general committees that were participating?</p> <p>5 A. Yes. Yes. Yes.</p> <p>6 Q. What was the nature of that conflict?</p> <p>7 A. Work equity.</p> <p>8 Q. Could you expand on that a little bit?</p> <p>9 What do you mean by work equity?</p> <p>10 A. Well, when the two railroads merged, they</p> <p>11 were running a certain percentage of trains on this</p> <p>12 line and a certain percentage on another line and</p> <p>13 when they merged the lines, the railroad then moves</p> <p>14 the traffic on whichever line they deem is more</p> <p>15 beneficial to them. But according to implementing</p> <p>16 agreement 1, I believe it is, they're entitled to in</p> <p>17 effect follow their work and so that was the problem.</p> <p>18 The fiscal committee and the Santa Fe committees,</p> <p>19 there was a dispute over how much work would be</p> <p>20 followed.</p> <p>21 Q. In your judgment, was that conflict</p> <p>22 between the two general committees over work equity</p> <p>23 apparent to the carrier?</p> <p>24 A. Yes.</p> <p>25 Q. During the negotiation of 17A, what was</p> |

| Page 22   | Page 24   |
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| <p>1 your role specifically?</p> <p>2 A. Advisor.</p> <p>3 Q. Did you sit at the table during the</p> <p>4 negotiations?</p> <p>5 A. Yes, I did.</p> <p>6 Q. Did you ever speak on behalf of the union</p> <p>7 representatives as a whole?</p> <p>8 A. Yes. Yes, I did.</p> <p>9 Q. Did you suggest any particular provisions</p> <p>10 that would be included in the agreement?</p> <p>11 A. No, I don't think I did.</p> <p>12 Q. In reaching what eventually became 17A,</p> <p>13 how did you resolve or did you resolve the conflict</p> <p>14 between the two general committees over the work</p> <p>15 equity issue?</p> <p>16 A. It wasn't an open conflict. It was just a</p> <p>17 dispute or what --</p> <p>18 Q. Tension?</p> <p>19 A. Tension, yes. And I've worked with these</p> <p>20 two enough that they know I'm very fair with -- and I</p> <p>21 don't take one side over the other. So they know if</p> <p>22 I make any suggestion or whatever, it's for the</p> <p>23 benefit of moving negotiations along.</p> <p>24 Q. In this particular case, what did you do</p> <p>25 to resolve the situation?</p> | <p>1 A. I believe I did. I might have missed the</p> <p>2 very first one but I believe I attended the rest.</p> <p>3 Q. How many were there?</p> <p>4 A. Two or three, I think.</p> <p>5 Q. To your understanding, has this agreement,</p> <p>6 the one you have in front of you, 17A, ever been</p> <p>7 fully implemented? In other words, have all of its</p> <p>8 provisions been put into --</p> <p>9 A. I believe it has not.</p> <p>10 Q. Do you understand why that is not so, why</p> <p>11 it has not been implemented?</p> <p>12 A. No, I do not.</p> <p>13 Q. Have you ever had a conversation with</p> <p>14 anyone at BNSF -- well, let me back up.</p> <p>15 Do you have any understanding about</p> <p>16 whether it was the carrier's decision or the union's</p> <p>17 decision not to implement this agreement?</p> <p>18 A. It was the carrier's decision.</p> <p>19 Q. And have you ever had a conversation with</p> <p>20 anyone at the carrier about why they reached that</p> <p>21 decision?</p> <p>22 A. I don't know if I had a conversation on</p> <p>23 why. I had a conversation, I believe -- I believe</p> <p>24 I've had one or two conversations with Wendell Bell</p> <p>25 that they did not.</p> |
| Page 23   | Page 25   |
| <p>1 A. I guess I just suggested that we follow</p> <p>2 the agreements, the previous agreements.</p> <p>3 Q. There was a plan that was developed to</p> <p>4 provide that certain amount of the work that would be</p> <p>5 done on the Red Rock line would be handled by crews</p> <p>6 from the Madill, the Creek line, is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And did you have any say in how those</p> <p>9 transfers would take place?</p> <p>10 A. No.</p> <p>11 Q. In other words, the number of crews that</p> <p>12 would move from one to the other?</p> <p>13 A. No, I did not.</p> <p>14 Q. Who came up with the general solution to</p> <p>15 that issue?</p> <p>16 A. The carriers and the general chairmen</p> <p>17 involved.</p> <p>18 Q. Were you asked to comment on or approve</p> <p>19 that division?</p> <p>20 A. No, I was not.</p> <p>21 Q. Who participated from the carrier side in</p> <p>22 these negotiations?</p> <p>23 A. Wendell Bell.</p> <p>24 Q. Did you attend all of the negotiation</p> <p>25 sessions?</p>  | <p>1 Q. About the fact that they had not?</p> <p>2 A. That's correct.</p> <p>3 Q. In those conversations, did Mr. Bell ever</p> <p>4 say anything about the need -- the carrier's need to</p> <p>5 get parallel agreements with the UTU?</p> <p>6 A. He could have.</p> <p>7 Q. You just don't recall?</p> <p>8 A. No, I do not.</p> <p>9 Q. Have you ever encountered -- well, let me</p> <p>10 ask you this. Have you ever negotiated or</p> <p>11 participated in negotiation of implementing</p> <p>12 agreements of this kind in the past prior to 17A?</p> <p>13 A. Yes, yes, when I was general chairman on</p> <p>14 Norfolk Southern, when they acquired Conrail.</p> <p>15 Q. Did any of those negotiations raise the</p> <p>16 issue of the carrier's need to have similar</p> <p>17 agreements for both of the operating crafts?</p> <p>18 A. No. In fact, there was some differences</p> <p>19 between ours and the UTU's.</p> <p>20 Q. In the Norfolk Southern example?</p> <p>21 A. Yes.</p> <p>22 Q. How many of those agreements were you</p> <p>23 involved in on Norfolk Southern?</p> <p>24 A. Just one on Norfolk Southern.</p> <p>25 Q. In connection with the nonimplementation</p>                            |

7 (Pages 22 to 25)

| Page 26   | Page 28   |
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| <p>1 of 17A, did you talk to anyone other than Mr. Bell</p> <p>2 about the fact that the agreement had not been</p> <p>3 implemented?</p> <p>4 A. Yes, I talked to the two general chairmen.</p> <p>5 Q. And they were Mr. Gibbons and</p> <p>6 Mr. Williams?</p> <p>7 A. That's correct.</p> <p>8 Q. Who did you talk to about that issue</p> <p>9 first, if you recall?</p> <p>10 A. I don't recall which one I talked to</p> <p>11 first.</p> <p>12 Q. Do you recall roughly when it was that you</p> <p>13 spoke to one or both of them?</p> <p>14 A. Well, I would assume it would have been in</p> <p>15 July of 2004.</p> <p>16 Q. So within a month or so of the date of the</p> <p>17 arbitration award?</p> <p>18 A. That's correct.</p> <p>19 Q. I'm sorry if I asked you this already.</p> <p>20 You were in fact one of the members of the</p> <p>21 arbitration panel?</p> <p>22 A. Yes, I was.</p> <p>23 Q. Did you ever have a three-way call with</p> <p>24 Mr. Gibbons and Mr. Williams?</p> <p>25 A. I don't remember one.</p>   | <p>1 A. Yes.</p> <p>2 Q. Whose idea was it to do that?</p> <p>3 A. It was the carriers.</p> <p>4 Q. Do you recall speaking to Mr. Bell about</p> <p>5 partial implementation of 17A?</p> <p>6 A. No, I do not.</p> <p>7 Q. Are you aware that Mr. Bell has asserted</p> <p>8 that you called him on or about August 12th and asked</p> <p>9 him to put at least part of 17A into effect?</p> <p>10 A. Yes, I am.</p> <p>11 Q. And do you agree that that in fact</p> <p>12 happened?</p> <p>13 A. No, I do not agree that that happened.</p> <p>14 Q. Do you disagree that there was ever such a</p> <p>15 call or simply about the content of that call?</p> <p>16 A. I disagree about the content of the call.</p> <p>17 I don't remember the call but he could be correct</p> <p>18 that I did call him. But the content of me saying or</p> <p>19 trying to convince him to partially implement it is</p> <p>20 incorrect.</p> <p>21 Q. So is it your belief that Mr. Bell went</p> <p>22 ahead and did the partial implementation for his own</p> <p>23 reasons or for the carrier's reasons?</p> <p>24 A. You would have to ask Mr. Bell what</p> <p>25 reasons he did it. If you're asking what my belief</p>  |
| Page 27   | Page 29   |
| <p>1 Q. Do you recall generally what the content</p> <p>2 was of those conversations you had had with them</p> <p>3 around that time?</p> <p>4 A. Yes, I do. The content was that we wanted</p> <p>5 the arbitration award implemented.</p> <p>6 Q. And is it your view that that was a desire</p> <p>7 that was shared by all three of you?</p> <p>8 A. Mr. Gibbons wanted it implemented.</p> <p>9 Mr. Williams really didn't care one way or the other</p> <p>10 if it ever got implemented.</p> <p>11 Q. And did you discuss with Mr. Gibbons</p> <p>12 and/or Mr. Williams how to go about getting it</p> <p>13 implemented?</p> <p>14 A. We discussed what we would try to do if</p> <p>15 they didn't implement it, yes.</p> <p>16 Q. And what was that?</p> <p>17 A. We would appeal to the national division</p> <p>18 to take it before the STB.</p> <p>19 Q. Do you recall roughly how many</p> <p>20 conversations you had with those two gentlemen?</p> <p>21 A. No, I do not.</p> <p>22 Q. Is it your understanding that the carrier</p> <p>23 has implemented parts of 17A?</p> <p>24 A. I'm sorry?</p> <p>25 Q. Has implemented parts of 17A?</p> | <p>1 is, I believe it was for their own purposes, yes.</p> <p>2 Q. And what purposes would be served by a</p> <p>3 partial implementation?</p> <p>4 A. Mr. Gibbons' people were turning in time</p> <p>5 claims, penalty time claims because they felt they</p> <p>6 were not getting all the work they were entitled to</p> <p>7 or the correct trains they were entitled to and</p> <p>8 Mr. Bell knew that.</p> <p>9 So Mr. Bell, I think by partially</p> <p>10 implementing it, was cutting his liability.</p> <p>11 Q. The liability that you're talking about</p> <p>12 was accruing -- would have been accruing under 17A or</p> <p>13 did it have nothing to do with 17A?</p> <p>14 A. It would have been under 17A, I believe,</p> <p>15 yes.</p> <p>16 Q. So if 17A had been -- let's assume 17A was</p> <p>17 implemented soon after the award and the carrier had</p> <p>18 just continued to do what it was doing. In those</p> <p>19 circumstances, the carrier would be accruing</p> <p>20 liability, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And so the members who were filing claims</p> <p>23 were doing so on the basis that 17A either had been</p> <p>24 or should have been implemented sooner?</p> <p>25 A. That's correct.</p> |

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| <p>1 Q. Did the partial implementation of 17A by<br/>2 Mr. Bell on or about August 12th in fact cause<br/>3 members to stop submitting claims?<br/>4 A. Well, they stopped submitting claims for<br/>5 that reason.<br/>6 Q. But they didn't stop submitting claims for<br/>7 other reasons?<br/>8 A. That's correct.<br/>9 Q. Including other reasons relating to 17A?<br/>10 A. I'm not privy to that so I don't know<br/>11 whether they did or not.<br/>12 Q. Is it your belief, then, that it was<br/>13 Mr. Bell who came up with the idea of putting in just<br/>14 part of 17A?<br/>15 A. I couldn't say who came up with it. All I<br/>16 can say is I didn't.<br/>17 Q. Had you talked to anyone prior to when<br/>18 that happened, the partial implementation, have you<br/>19 talked to anyone about the idea of partial<br/>20 implementation?<br/>21 A. No, I did not.<br/>22 Q. Do you recall anything about the content<br/>23 of that call with Mr. Bell sometime in early August?<br/>24 A. No, I do not.<br/>25 Q. Let me show you what's been previously</p>          | <p>1 together. Partial implementation only takes care of<br/>2 one. It does not take care of both. And as I said<br/>3 in the past, I would never interfere or come down on<br/>4 the side of one or the other one. If I did that, I<br/>5 would no longer be a so-called honest broker between<br/>6 the two of them and I would lose my effectiveness.<br/>7 Three, I think partial implementation is<br/>8 illegal.<br/>9 Q. What's your practice with respect to<br/>10 receiving e-mails? In other words --<br/>11 A. I'm on AOL.<br/>12 Q. And do you view your e-mails on your<br/>13 computer screen yourself or do you have someone print<br/>14 them out for you?<br/>15 A. No, I do it myself.<br/>16 Q. And do you retain them for any period of<br/>17 time?<br/>18 A. Generally not. If I get one that I think<br/>19 I will need down the line or be of use down the line,<br/>20 I'll print it out.<br/>21 Q. So sitting here today, you have no way of<br/>22 knowing for sure whether or not you've received any<br/>23 particular e-mail that you would have deleted in the<br/>24 past?<br/>25 A. I have no way of proving it. I'm sorry.</p> |
| Page 31  | Page 33   |
| <p>1 marked as Exhibit 5. Let me know when you've had a<br/>2 chance to --<br/>3 A. Okay, I've seen it. Yes.<br/>4 Q. Do you see the reference there in the<br/>5 middle of the page to Rick and Steve convinced me?<br/>6 A. Yes, I do.<br/>7 Q. And I take it from your earlier testimony<br/>8 that you disagreed that that is in fact true?<br/>9 A. That's correct.<br/>10 Q. Did you ever respond to this e-mail?<br/>11 A. No, because I don't recall getting that<br/>12 e-mail, even though it shows me copied on it. I'm<br/>13 pretty sure I didn't because if I had gotten it, I<br/>14 would have responded to it.<br/>15 Q. And you would have denied that that was<br/>16 accurate?<br/>17 A. That's correct, yes.<br/>18 Q. What's your basis for saying that you<br/>19 didn't receive it?<br/>20 A. Well, again, if I had received it, I would<br/>21 have responded to it and there are three reasons I<br/>22 would have responded to it.<br/>23 One, I don't have the authority to tell<br/>24 him to implement it.<br/>25 Two, the general chairmen were in this</p> | <p>1 That's a more accurate way of putting it.<br/>2 Q. You said a moment ago that it's illegal to<br/>3 partially implement?<br/>4 A. I believe it is, yes.<br/>5 Q. Isn't it true that the carrier and the<br/>6 union could agree to modify an existing agreement?<br/>7 A. I believe they could, yes.<br/>8 Q. So it's true, then, isn't it, that the<br/>9 carrier and the union could agree to partially<br/>10 implement something?<br/>11 A. I think they could, yes.<br/>12 Q. The carrier can't do it unilaterally but<br/>13 if the union asks for it, then that's okay?<br/>14 A. Yes, I think so.<br/>15 Q. If the carrier rescinded the partial<br/>16 implementation of 17A, would that resolve your<br/>17 concerns about this agreement?<br/>18 A. The question is not resolving my concerns.<br/>19 It's resolving the general chairmen's concerns.<br/>20 Q. Would it resolve the general chairmen's<br/>21 concerns, to your understanding?<br/>22 A. I don't believe it would, no.<br/>23 Q. Why not?<br/>24 A. Well, because Rick Gibbons would then lose<br/>25 some of the equity that he's gaining now.</p>                              |

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| <p>1 Q. So Mr. Gibbons, to your understanding,</p> <p>2 benefits to some degree from having those allocations</p> <p>3 from 17A in effect?</p> <p>4 A. Yes, he does.</p> <p>5 Q. Do you agree that as a practical matter,</p> <p>6 the allocations provided in arm 3 of 17A are</p> <p>7 severable from the train operations in articles 1</p> <p>8 and 2?</p> <p>9 A. I'm not following you.</p> <p>10 Q. Article 3 is the part of 17A that deals</p> <p>11 with pool allocations, correct?</p> <p>12 A. Uh-huh.</p> <p>13 Q. And articles 1 and 2 deal with how</p> <p>14 operations will be conducted on the Red Rock,</p> <p>15 correct?</p> <p>16 A. Well, it deals with that. It deals with</p> <p>17 other things too, yes.</p> <p>18 Q. And those are two separate subjects,</p> <p>19 right, train operations and allocations?</p> <p>20 A. Not necessarily.</p> <p>21 Q. And what's the relationship between them?</p> <p>22 A. The relationship is the whole national</p> <p>23 agreement. I mean, how can you separate one from the</p> <p>24 other? Without one, you don't have the other.</p> <p>25 Q. You could reach an agreement on simply the</p> | <p>1 Q. Do you recall seeing a copy of that prior</p> <p>2 to today?</p> <p>3 A. Yes, I have.</p> <p>4 Q. Did you receive a copy of it sometime soon</p> <p>5 after August 12th?</p> <p>6 A. According to what I had in my office, I</p> <p>7 think I received a copy of that, yes.</p> <p>8 Q. What was your reaction upon receiving it?</p> <p>9 A. I was a little miffed, I would say. That</p> <p>10 was my reaction.</p> <p>11 Q. Did you contact Mr. Bell upon receiving</p> <p>12 notice of this?</p> <p>13 A. No, I did not. Again, if you'll notice,</p> <p>14 the letter is addressed to Mr. Williams and</p> <p>15 Mr. Gibbons, not to myself. Mr. Gibbons and</p> <p>16 Mr. Williams would have to be the ones to do anything</p> <p>17 about it if they were going to do something about it.</p> <p>18 Not myself.</p> <p>19 Q. I know that I asked you whether you had</p> <p>20 spoken to anyone about the concept of partial</p> <p>21 implementation prior to August 12th.</p> <p>22 A. Yes, you did.</p> <p>23 Q. Specifically, did you speak to Mr. Gibbons</p> <p>24 about it?</p> <p>25 A. About partial implementation?</p>  |
| Page 35   | Page 37  |
| <p>1 issue of allocations, correct?</p> <p>2 A. Well, I guess you could if you could get</p> <p>3 the general chairmen to agree to it but I don't think</p> <p>4 you could.</p> <p>5 Q. You could reach an agreement that solely</p> <p>6 contained articles 1 and 2, correct?</p> <p>7 A. Again, if you could get the general</p> <p>8 chairmen to agree to it but I don't believe you</p> <p>9 could.</p> <p>10 MR. MUNRO: Why don't we take a</p> <p>11 five-minute break and I will determine if I have</p> <p>12 anything else.</p> <p>13 MR. WOLLY: Okay.</p> <p>14 (Recess.)</p> <p>15 BY MR. MUNRO:</p> <p>16 Q. Mr. Speagle, I'm going to show you what's</p> <p>17 been previously marked as Exhibit 17.</p> <p>18 A. Okay.</p> <p>19 Q. And ask you if you recognize that.</p> <p>20 A. Yes, I do.</p> <p>21 Q. Could you tell us what it is, please?</p> <p>22 A. Well, it looks like a letter, again, to</p> <p>23 Mr. Gibbons and Mr. Williams, not to me, that says</p> <p>24 that he was going to implement section 3 of article 4</p> <p>25 of 17A.</p>  | <p>1 Q. About partial implementation.</p> <p>2 A. No, I did not speak to Mr. Gibbons about</p> <p>3 partial implementation.</p> <p>4 Q. Did he say anything like, at least we</p> <p>5 would like to get the partial allocations into</p> <p>6 effect?</p> <p>7 A. I don't recall any conversation of that</p> <p>8 type. And again, because if I have, I would have</p> <p>9 told him that I did not believe that was right and</p> <p>10 proper and you could not partially implement an</p> <p>11 arbitration award.</p> <p>12 Q. After receiving this, did you have any</p> <p>13 conversations at that point with Mr. Gibbons?</p> <p>14 A. I'm sure I did, yes.</p> <p>15 Q. Do you recall the content of those?</p> <p>16 A. Just what I just said. I would have</p> <p>17 probably told him I didn't think that was right and</p> <p>18 proper.</p> <p>19 See, there were other things in there that</p> <p>20 he needed and that was protection for him and also</p> <p>21 Mr. Williams that was not implemented. I told him</p> <p>22 that I thought -- I don't believe they can implement</p> <p>23 part of it because it's in effect a bastardization of</p> <p>24 the arbitration process.</p> <p>25 If the carriers could do that and get away</p> |

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| <p>1 with it, then any time there was an arbitration, they</p> <p>2 would only -- generally, as in this case, this</p> <p>3 arbitrator imposed an initial agreement. Agreements</p> <p>4 generally have something for both parties. So if you</p> <p>5 allow them to just impose part of the agreement and</p> <p>6 if they think they can do it and get away with it,</p> <p>7 they'll only impose the provisions that are favorable</p> <p>8 to them and they wouldn't give us any. And that</p> <p>9 can't be allowed to stand.</p> <p>10 Q. In this case, with 17A, is it your view</p> <p>11 that the allocations are for the benefit of the</p> <p>12 carrier and the other provisions are for the benefit</p> <p>13 of the union?</p> <p>14 A. No, no, that's not my -- no.</p> <p>15 Q. During the negotiation of 17A, who was it</p> <p>16 that was asking for the changes in the allocations</p> <p>17 under article 3?</p> <p>18 A. Basically it was Rick Gibbons.</p> <p>19 Q. Isn't it true that what the carrier wanted</p> <p>20 was the changes in train operations that is reflected</p> <p>21 in articles 1 and 2?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. I'm showing you what's been previously</p> <p>24 marked as Exhibit 19. And again, after you've had a</p> <p>25 minute, let me know when you're ready.</p> | <p>1 Mr. Gibbons participated in the implementation of</p> <p>2 allocations provisions of 17A? In other words, did</p> <p>3 he resist that in any respect?</p> <p>4 A. I don't know.</p> <p>5 Q. In your view -- and I understand I'm</p> <p>6 asking you to interpret someone else's state of mind</p> <p>7 but is it fair to say that there have been</p> <p>8 circumstances, at least some circumstances in the</p> <p>9 past where it would have been reasonable for Mr. Bell</p> <p>10 to believe that you were speaking on behalf of the</p> <p>11 BLET when you spoke to him?</p> <p>12 A. No.</p> <p>13 Q. It would never be appropriate for Mr. Bell</p> <p>14 to have that impression?</p> <p>15 A. No.</p> <p>16 Q. Are there other members of the executive</p> <p>17 piece of BLET other than the vice presidents and the</p> <p>18 president?</p> <p>19 A. There is a secretary/treasurer and a first</p> <p>20 vice president.</p> <p>21 Q. After Mr. Gibbons sent his letter on</p> <p>22 September 1st, 2004, do you recall when the next time</p> <p>23 was that this issue was raised with the carrier,</p> <p>24 specifically the objection to partial implementation?</p> <p>25 A. You mean by either general chairmen?</p> |
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| <p>1 A. Okay.</p> <p>2 Q. Do you recognize that document?</p> <p>3 A. Yes.</p> <p>4 Q. Could you tell us what that is, please?</p> <p>5 A. It is a letter from Wendell Bell to Rick</p> <p>6 Gibbons protesting the partial implementation of 17A.</p> <p>7 Q. Did you participate in drafting that</p> <p>8 letter?</p> <p>9 A. No, I did not and to answer your question,</p> <p>10 I did not participate in the drafting of the letter.</p> <p>11 I would imagine that the conversations that I had</p> <p>12 with Rick Gibbons, you know, played a part in it.</p> <p>13 Q. Do you recall how soon after the August</p> <p>14 12th notice you had those conversations with</p> <p>15 Mr. Gibbons?</p> <p>16 A. No, I do not.</p> <p>17 Q. This letter is dated September 1st. Do</p> <p>18 you know if Mr. Gibbons or Mr. Williams had objected</p> <p>19 to the partial implementation prior to this?</p> <p>20 A. You mean over the phone or by e-mail or</p> <p>21 something like that?</p> <p>22 Q. In any way, yes.</p> <p>23 A. I would assume they did but I don't know</p> <p>24 that for a fact.</p> <p>25 Q. Do you have any knowledge about whether</p>  | <p>1 Q. Yes.</p> <p>2 A. No, I do not know.</p> <p>3 Q. How about the next times Mr. Gibbons</p> <p>4 raised it?</p> <p>5 MR. WOLLY: You just asked him that</p> <p>6 question and he answered it.</p> <p>7 BY MR. MUNRO:</p> <p>8 Q. I think my question previously was whether</p> <p>9 either general chairmen had raised it and I'm asking</p> <p>10 you specifically about Mr. Gibbons.</p> <p>11 A. I do not know.</p> <p>12 Q. I'm showing you what's been previously</p> <p>13 marked as Exhibit 7 and again ask you to let me know</p> <p>14 when you're ready.</p> <p>15 A. Okay.</p> <p>16 Q. Could you identify that for us, please?</p> <p>17 A. This is a letter to Wendell Bell from Rick</p> <p>18 Gibbons again questioning the partial implementation</p> <p>19 of 17A.</p> <p>20 Q. Do you have any understanding about</p> <p>21 whether -- let me back up. This letter is dated</p> <p>22 February 25th, 2005, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Isn't it true that Mr. Gibbons had not</p> <p>25 raised this issue with Mr. Bell since his</p>  |

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|--|---|
| 1 September 1st letter of 2004?                          | 1   |
| 2 A. No, I believe that's correct. I believe             | 2   |
| 3 he did raise it.                                       | 3   |
| 4 Q. And what's the basis for that statement?            | 4   |
| 5 A. Because it was an ongoing dispute and               | 5   |
| 6 Mr. Gibbons is not the type of person that would       | 6   |
| 7 write one letter and then leave it lay like that,      | 7   |
| 8 especially when his people would -- see, the reason    | 8 SUBSCRIBED AND SWORN to before me this _____ day of |
| 9 Mr. Gibbons is on this so much is because his people   | 9   |
| 10 are on him and if they're not getting the work that   | 10  |
| 11 they feel they're entitled to or they're not getting  | 11 _____,   |
| 12 the other benefits of the agreement they feel they're | 12  |
| 13 entitled to, they're going to stay on his case. And   | 13  |
| 14 when they're on his case, Rick is going to be on      | 14  |
| 15 Wendell Bell's case.                                  | 15  |
| 16 Q. Do you have any knowledge about what the           | 16  |
| 17 traffic patterns have been like on the two lines at   | 17  |
| 18 issue?  | 18 My Commission Expires: _____                       |
| 19 A. No, I do not. That's not an area I get             | 19  |
| 20 into.   | 20  |
| 21 Q. Have you heard anyone talk about a                 | 21  |
| 22 migration of traffic back from the Red Rock to the    | 22  |
| 23 Madill line completely?                               | 23  |
| 24 A. I think I read it in the depositions               | 24  |
| 25 there. Wasn't it?                                     | 25  |
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| 1 Q. Do you think that Mr. Bell is lying when            |   |
| 2 he says that you and Mr. Gibbons convinced him to      |   |
| 3 partially implement or is he just incorrect?           |   |
| 4 A. I would say he's incorrect.                         |   |
| 5 Q. Is it possible that he misunderstood some           |   |
| 6 conversations that you and Mr. Gibbons had with him    |   |
| 7 about this issue?                                      |   |
| 8 A. It's always possible to misunderstand a             |   |
| 9 conversation. Me and my wife have disagreements all    |   |
| 10 the time.   |   |
| 11 Q. That I understand. I have nothing                  |   |
| 12 further.  |   |
| 13 MR. WOLLY: Thank you. I don't have any                |   |
| 14 questions.  |   |
| 15 (Whereupon, at 2:20 p.m., the taking of               |   |
| 16 the instant deposition ceased.)                       |   |
| 17   |   |
| 18   |   |
| 19   |   |
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| 24   |   |
| 25   |   |

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| <b>says</b> 17:23 35:23<br>43:2              | <b>single</b> 8:20                                       | <b>Steve</b> 31:5                      | <b>talking</b> 14:16<br>29:11  | <b>totally</b> 11:13<br>13:5 19:1                    |
| <b>screen</b> 32:13                          | <b>sit</b> 22:3  | <b>Steven</b> 1:13 3:3<br>4:3,15       | <b>task</b> 11:3   | <b>traffic</b> 21:14<br>42:17,22                     |
| <b>secretary/trea...</b><br>6:22 40:19       | <b>sitting</b> 32:21                                     | <b>stop</b> 30:3,6                     | <b>team</b> 7:8 16:1   | <b>train</b> 34:7,19<br>38:20                        |
| <b>section</b> 18:7<br>35:24                 | <b>situation</b> 22:25                                   | <b>stopped</b> 30:4                    | <b>Teamsters</b> 6:6   | <b>trainmen</b> 2:12<br>6:2 7:11,13                  |
| <b>see</b> 17:18,21,25<br>31:4 37:19<br>42:8 | <b>SKINNER</b> 2:5                                       | <b>structure</b> 8:8<br>10:10 11:11,14 | <b>tell</b> 4:24 17:8<br>31:23 35:21<br>39:4   | <b>trains</b> 21:11<br>29:7                          |
| <b>seeing</b> 36:1                           | <b>solely</b> 35:5                                       | <b>structured</b> 10:3                 | <b>Tension</b> 22:18<br>22:19  | <b>transcribed</b> 1:23                              |
| <b>seen</b> 18:12 19:23<br>31:3              | <b>solution</b> 23:14                                    | <b>structures</b> 6:9                  | <b>terms</b> 6:8 19:23<br>20:2   | <b>transferred</b> 5:14<br>5:16                      |
| <b>sense</b> 5:6 20:25                       | <b>soon</b> 29:17 36:4<br>39:13                          | <b>stuff</b> 13:8                      | <b>territory</b> 6:24<br>7:14  | <b>transfers</b> 23:9                                |
| <b>sent</b> 40:21                            | <b>sooner</b> 29:24                                      | <b>subjects</b> 34:18                  | <b>testified</b> 4:6   | <b>TRANSPORT...</b><br>1:1                           |
| <b>separate</b> 34:18<br>34:23               | <b>sorry</b> 5:15 13:7<br>26:19 27:24<br>32:25           | <b>submitting</b> 30:3<br>30:4,6       | <b>testimony</b> 31:7  | <b>treat</b> 14:3                                    |
| <b>September</b><br>39:17 40:22<br>42:1      | <b>sort</b> 10:23 12:5                                   | <b>SUBSCRIBED</b><br>44:8              | <b>Thank</b> 43:13   | <b>true</b> 9:22 16:21<br>31:8 33:5,8<br>38:19 41:24 |
| <b>serve</b> 11:18                           | <b>Southern</b> 5:19<br>25:14,20,23,24                   | <b>suggest</b> 22:9                    | <b>thing</b> 10:23 12:5<br>17:1  | <b>try</b> 4:24 14:11<br>27:14                       |
| <b>served</b> 29:2                           | <b>so-called</b> 32:5                                    | <b>suggested</b> 23:1                  | <b>things</b> 34:17<br>37:19   | <b>trying</b> 28:19                                  |
| <b>sessions</b> 23:25                        | <b>Speagle</b> 1:13 3:3<br>4:3,9,15,16 6:7<br>17:3 35:16 | <b>suggestion</b> 14:8<br>21:1 22:22   | <b>think</b> 8:4 10:3<br>16:15,18 22:11<br>24:4 29:9 32:7<br>32:18 33:11,14<br>35:3 36:7<br>37:17 38:6<br>41:8 42:24 | <b>turning</b> 29:4                                  |
| <b>seven</b> 15:19                           | <b>speak</b> 13:12,18<br>22:6 36:23<br>37:2              | <b>Suite</b> 2:16                      |  | <b>two</b> 9:14 13:18<br>15:25 21:3,10               |
| <b>severable</b> 34:7                        | <b>speaking</b> 8:7<br>14:8 28:4<br>40:10                | <b>SURFACE</b> 1:1                     |  |  |
| <b>shaking</b> 4:22                          |  | <b>switchman</b> 5:13                  |  |  |
|  |  | <b>sworn</b> 1:16 4:5                  |  |  |

|                          |                        |                        |                        |                     |
|--------------------------|------------------------|------------------------|------------------------|---------------------|
| 21:22 22:14,20           | 10:21,24 11:15         | 10:1 35:13             | 34:10 35:25            | <b>9</b>            |
| 24:4,24 26:4             | 15:18,22,24,25         | 41:5 43:13             | 38:10,15 39:6          | <b>901 1:19 2:7</b> |
| 27:20 31:25              | 16:24 17:24            | <b>words</b> 9:13      | 40:2 41:19             | <b>95 9:8</b>       |
| 32:6 34:18               | 19:6,21 20:16          | 16:18 19:20            | <b>19</b> 38:24        |                     |
| 42:17                    | 40:17,20               | 23:11 24:7             | <b>1972</b> 5:17       |                     |
| <b>type</b> 37:8 42:6    | <b>view</b> 27:6 32:12 | 32:10 40:2             | <b>1995</b> 5:18       |                     |
| <b>U</b>                 | 38:10 40:5             | <b>work</b> 12:3 21:7  | <b>2</b>               |                     |
| <b>Uh-huh</b> 17:22      | <b>violation</b> 13:3  | 21:9,17,19,22          | <b>2</b> 34:8,13 35:6  |                     |
| 34:12                    | <b>W</b>               | 22:14 23:4             | 38:21                  |                     |
| <b>uncommon</b>          | <b>wage</b> 7:8        | 29:6 42:10             | <b>2:20</b> 43:15      |                     |
| 18:18,20                 | <b>want</b> 10:17      | <b>worked</b> 22:19    | <b>20001</b> 2:8       |                     |
| <b>understand</b> 4:24   | 19:21                  | <b>Worth</b> 8:3 9:6   | <b>2001</b> 5:19       |                     |
| 14:10,12,18              | <b>wanted</b> 27:4,8   | <b>wouldn't</b> 38:8   | <b>20036-5420</b> 2:17 |                     |
| 18:25 20:19              | 38:19                  | <b>write</b> 42:7      | <b>2004</b> 26:15      |                     |
| 24:10 40:5               | <b>wants</b> 16:23     | <b>X</b>               | 40:22 42:1             |                     |
| 43:11                    | <b>Washington</b>      | <b>X</b> 1:2,10        | <b>2005</b> 41:22      |                     |
| <b>understanding</b>     | 1:11,20 2:8,17         | <b>Y</b>               | <b>2006</b> 1:12,21    |                     |
| 24:5,15 27:22            | <b>wasn't</b> 22:16    | <b>year</b> 16:7       | <b>202</b> 2:9,18      |                     |
| 33:21 34:1               | 42:25                  | <b>York</b> 1:19 2:7   | <b>25th</b> 41:22      |                     |
| 41:20                    | <b>way</b> 7:13 10:3   | <b>Z</b>               | <b>3</b>               |                     |
| <b>understands</b>       | 20:4,15 27:9           | <b>Zwerdling</b> 2:14  | <b>3</b> 34:6,10 35:24 |                     |
| 16:17                    | 32:21,25 33:1          | <b>1</b>               | 38:17                  |                     |
| <b>unilaterally</b>      | 39:22                  | <b>1</b> 1:12,21 21:16 | <b>32549</b> 1:4       |                     |
| 33:12                    | <b>Wednesday</b> 1:12  | 34:7,13 35:6           | <b>346-4000</b> 2:9    |                     |
| <b>union</b> 6:4,8 8:14  | 1:20                   | 38:21                  | <b>4</b>               |                     |
| 9:18 10:2                | <b>week</b> 13:18      | <b>1st</b> 39:17 40:22 | <b>4</b> 3:4 17:16     |                     |
| 11:18 12:25              | <b>Welt</b> 30:4       | 42:1                   | 35:24                  |                     |
| 14:13,17 15:7            | <b>Wendell</b> 13:10   | <b>1:00</b> 1:20       | <b>5</b>               |                     |
| 22:6 33:6,9,13           | 23:23 24:24            | <b>1025</b> 2:15       | <b>5</b> 31:1          |                     |
| 38:13                    | 39:5 41:17             | <b>11</b> 17:4         | <b>6</b>               |                     |
| <b>unions</b> 6:11       | 42:15                  | <b>12th</b> 28:8 30:2  | <b>64</b> 5:12         |                     |
| <b>union's</b> 24:16     | <b>went</b> 9:4 28:21  | 36:5,21 39:14          | <b>66</b> 5:14         |                     |
| <b>unusual</b> 12:22     | <b>Western</b> 5:13    | <b>17</b> 35:17        | <b>67</b> 5:15         |                     |
| 12:24                    | <b>we're</b> 15:9      | <b>17A</b> 17:11 19:24 | <b>68</b> 5:16         |                     |
| <b>use</b> 32:19         | <b>whichever</b> 21:14 | 20:17 21:25            | <b>7</b>               |                     |
| <b>usually</b> 10:20     | <b>wife</b> 43:9       | 22:12 24:6             | <b>7</b> 41:13         |                     |
| <b>UTU</b> 25:5          | <b>Williams</b> 26:6   | 25:12 26:1             | <b>712</b> 2:16        |                     |
| <b>UTU's</b> 25:19       | 26:24 27:9,12          | 27:23,25 28:5          | <b>8</b>               |                     |
| <b>V</b>                 | 35:23 36:14,16         | 28:9 29:12,13          | <b>857-5000</b> 2:18   |                     |
| <b>various</b> 6:9       | 37:21 39:18            | 29:14,16,16,23         |                        |                     |
| <b>verbal</b> 4:22       | <b>witness</b> 1:13,16 | 30:1,9,14              |                        |                     |
| <b>vice</b> 5:20 6:21,23 | 3:2 4:4 10:6           | 33:16 34:3,6           |                        |                     |
| 8:9 10:12,14             | 44:4                   |                        |                        |                     |
|                          | <b>Wolly</b> 2:13,14   |                        |                        |                     |



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BNSF MERGER IMPLEMENTING AGREEMENT 17A

between

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY CO.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

1. The purpose of this agreement is to provide for expedited changes in services and operations to effectuate the common control approved by the I. C. C. in Finance Docket No. 32549.

2. This agreement amends BNSF Merger Implementing Agreement 17 to remedy the operational difficulties and train-symbol-specific seniority limitations that arose from that earlier agreement and its subsequent side letters and interpretations. This agreement also covers subsequent diversions of trains from the former Frisco's Tulsa - Madill - Ft. Worth corridor to the Tulsa - Black Bear/Perry - Oklahoma City - Ft. Worth corridor and, under the BN-Santa Fe merger, fully integrates operations along the Oklahoma City corridor.

IT IS AGREED:

Article 1 - Scope of this Agreement

Section 1

A. This agreement covers all freight trains moving between Black Bear/Perry and the consolidated Ft. Worth terminal.

B. All trains moving between Tulsa (and beyond) and Ft. Worth (and beyond) will be handled by the former Frisco pools at Ft. Worth and Oklahoma City.

C. All trains moving between Arkansas City, Kansas (and beyond) and Ft. Worth (and beyond) will be handled by the former Santa Fe pools at Arkansas City, Gainesville and Temple (and the Santa Fe extra list at Alliance) as appropriate. Former Santa Fe pools will also handle trains originating or terminating at stations along the Black Bear/Perry - Ft. Worth corridor (other than the consolidated Ft. Worth and Oklahoma City terminals) at least to the next crew change point.

Example: On a Springfield-Davis train, an Oklahoma City Frisco pool crew would handle the train from Tulsa to Oklahoma City. Then, an Ark City-Gainesville ID pool crew would handle the train from Oklahoma City to Davis, and not a Ft. Worth Frisco pool crew even if a light engine movement is made from Davis on to Ft. Worth.

D. Trading of trains (or swapping trains) between the former Santa Fe pools (or extra boards) and the former BN pools (or extra boards), while en route or at the initial terminal is prohibited.

## Article 2 - Train Operation

### Section 1

It is recognized that all of these engineers may perform any necessary work at any location on this route under the terms of the applicable collective bargaining agreement.

### Section 2

The Gainesville - Purcell turnaround local, the Ark City - Oklahoma City local, and the Ardmore and Oklahoma City road switchers will not be eliminated due to the terms and conditions of this agreement.

## Article 3 - Allocations

### Section 1

A. Engineers' positions in the Oklahoma City - Tulsa pool will be allocated on the following basis:

|                    |                                      |
|--------------------|--------------------------------------|
| Turn 1-12          | former BN (SLSF)                     |
| Turn 13            | former ATSF                          |
| Turn 14            | former BN (SLSF)                     |
| Turn 15 and higher | (Repeat sequence of turns 13 and 14) |

B. Engineers' positions in the Ft. Worth - Oklahoma City pool will be allocated on the following basis:

|                    |                                      |
|--------------------|--------------------------------------|
| Turn 1-10          | former BN (SLSF)                     |
| Turn 11            | former ATSF                          |
| Turn 12            | former BN (SLSF)                     |
| Turn 13 and higher | (Repeat sequence of turns 11 and 12) |

C. Engineers' positions in the Arkansas City end of the Arkansas City - Gainesville pool will be allocated on the following basis:

|                    |                                      |
|--------------------|--------------------------------------|
| Turn 1-16          | former ATSF                          |
| Turn 17            | former BN (SLSF) <sup>1</sup>        |
| Turn 18            | former ATSF                          |
| Turn 19 and higher | (Repeat sequence of turns 17 and 18) |

D. Engineers' positions in the Gainesville end of the Arkansas City - Gainesville pool will be allocated on the following basis:

|           |                               |
|-----------|-------------------------------|
| Turn 1-12 | former ATSF                   |
| Turn 13   | former BN (SLSF) <sup>1</sup> |

---

<sup>1</sup> Former BN (SLSF) engineers will not receive allocations under paragraphs C and D until an aggregate of 28 turns have been reached in the Arkansas City - Gainesville pool.

Turn 14  
Turn 15 and higher

former ATSF  
(Repeat sequence of turns 13 and 14)

## Section 2

A. 1. Arkansas City engineers will take ATSF-allocated turns in the Oklahoma City - Tulsa pool.

A. 2. Gainesville engineers will take the ATSF-allocated turns in the Ft. Worth - Oklahoma City pool.

A. 3. Zone 2 (Madill ID Agreement) engineers will take the BN (SLSF) allocated turns at Gainesville; Oklahoma City and Zone 1 (Madill ID Agreement) engineers will take the BN (SLSF) allocated turns at Arkansas City. The manner in which the allocations will be shared (for instance, between Arkansas City and Gainesville; and between Oklahoma City and Tulsa) will be by a method worked out by the involved local chairmen. If the local chairmen are unable to agree on the method of distributing the allocations, the general chairmen and the general director of labor relations will resolve the matter.

B. If an allocated position goes no-bid by people with prior rights to that allocation, the senior bidder without the applicable prior rights will be awarded the position. For purposes of this agreement only, the junior demoted engineer at the location of the vacancy will be force assigned; if none, applicable schedule rules will govern.

## Section 3

Employees taking an allocation at other than their own home terminal will not be afforded any moving benefits. Instead, if requested, the company will provide lodging for such successful bidders at the home terminal of the pool in which they are working.

## Article 4 - General

### Section 1

A. The parties have negotiated this Agreement mindful of the fact that their futures are linked and that we must work together to succeed over the long term. Therefore, the parties mutually pledge and commit themselves to act reasonably in the application of this agreement.

B. The parties will meet within 90 days of the implementation of this Agreement to review its operation.

Section 2

A. All provisions of pre-existing agreements that conflict with the terms of this agreement are superseded to the extent of the conflict. All provisions of preexisting agreements that do not conflict with the terms of this agreement remain in full force and effect.

B. This implementing agreement is made pursuant to the New York Dock Conditions (360 I. C. C. 60, 84-90) which, by this reference, are incorporated here.

C. Except as specifically provided, nothing in this implementing agreement shall be interpreted to expand or contract protective benefits provided in the New York Dock Conditions imposed by the Interstate Commerce Commission and incorporated here by paragraph B of this section.

Section 3


This agreement will become effective upon 5 days' written notice from the carrier, after execution by the parties. It may later be changed by mutual agreement or in accord with applicable law.

Signed and accepted at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2003

for BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS


for THE BURLINGTON NORTHERN  
AND SANTA FE RAILWAY CO.

  
\_\_\_\_\_  
General Chairman

  
\_\_\_\_\_  
General Director - Labor Relations

  
\_\_\_\_\_  
General Chairman

Approved:

  
\_\_\_\_\_  
Vice President

**BNSF**



WENDELL BELL  
General Director  
Labor Relations

The Burlington Northern  
and Santa Fe Railway Company

P.O. Box 961030  
Ft. Worth, TX 76161-0030  
2600 Lou Menk Dr., OOB-GL  
Ft. Worth, TX 76131-2830  
Phone 817.352.1028  
Mobile 817.939.8429  
Fax 817.352.7482  
E-mail wendell.bell@bnsf.com

June 11, 2003

Mr. Rick Gibbons, GC  
Bhd. of Locomotive Engineers

Mr. Pat Williams, GC  
Bhd. of Locomotive Engineers

Gentlemen:

In connection with Article 3 - Allocations of BNSF Merger Implementing Agreement 17A, in the event of a line sale or lease resulting in a cessation of BNSF train operations along the line from Sapulpa to Irving, Section 1 A and B shall be changed to read:

A. Engineers' positions in the Oklahoma City - Tulsa pool will be allocated on the following basis:

|                    |                                      |
|--------------------|--------------------------------------|
| Turn 1-14.         | former BN (SLSF)                     |
| Turn 15            | former ATSF                          |
| Turn 16            | former BN (SLSF)                     |
| Turn 17 and higher | (Repeat sequence of turns 15 and 16) |

B. Engineers' positions in the Ft. Worth - Oklahoma City pool will be allocated on the following basis:

|                    |                                      |
|--------------------|--------------------------------------|
| Turn 1-13          | former BN (SLSF)                     |
| Turn 14            | former ATSF                          |
| Turn 15            | former BN (SLSF)                     |
| Turn 16 and higher | (Repeat sequence of turns 14 and 15) |

Please indicate your acceptance of this understanding by signing this letter.

Sincerely,

Accepted:

\_\_\_\_\_  
General Chairman

**BNSF**



WENDELL BELL  
General Director  
Labor Relations

The Burlington Northern  
and Santa Fe Railway Company

P.O. Box 961030  
Ft. Worth, TX 76161-0030  
2600 Lou Menk Dr., OOB-GL  
Ft. Worth, TX 76131-2830  
Phone 817.352.1028  
Mobile 817.939.8429  
Fax 817.352.7482  
E-mail [wendell.bell@bnsf.com](mailto:wendell.bell@bnsf.com)

June 11, 2003

Mr. Rick Gibbons, GC  
Bhd. of Locomotive Engineers

Dear Mr. Gibbons:

In connection with BNSF Merger Implementing Agreement 17A, and since, under Article 3, Section 2B, junior engineers will be force assigned to positions, demoted engineers at Oklahoma City, Ft. Worth (Zone 2 Madill ID Agreement), Enid, Tulsa (Zone 1 Madill ID Agreement) and Sherman prior rights will be allowed to bid on an engineers' position even if in a demoted status.

Please indicate your acceptance of this understanding by signing this letter.

Sincerely,

Accepted:

General Chairman

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## Bell, Wendell A

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**From:** Rick Gibbons [bletgca@earthlink.net]  
**Sent:** Wednesday, July 21, 2004 11:05 AM  
**To:** Wendell.Bell@bnsf.com  
**Cc:** Steve Speagle; Pat Williams  
**Subject:** Imp 17A-

Wendell,

I am in receipt of a signed copy of Imp 17A dated 06.11.04. When do you anticipate on implementing it? The Carrier approached this office over a year ago in a rush to get relief in manning particular trains and on-line work. We were there at every turn trying to cooperate and get what we felt was deserved. It has now been 40 days since the award was signed and yet the allocation in the pools has not changed and the TSP on trains has not changed. The side letter on demoted engineers bidding on assignments which was to help the ATSF requests still lies dormant until you pull the trigger. We are requesting you implement this language immediately and avoid any further delay. We should not be held hostage to what BNSF and utu do with regard to this issue. We are not married to the trainmen in the cab and should get what is due us immediately. Please advise as to your intentions.

Sincerely,

Rick Gibbons

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# Brotherhood of Locomotive Engineers and Trainmen

## General Committee of Adjustments

Burlington Northern and Santa Fe Railway Company

Missouri and Northern Arkansas Railroad

5040 South Harmony  
Rogersville, MO 65742

R.C. Gibbons  
General Chairman

R.J. Dumey  
First Vice Chairman

T.L. Stipp  
General Sec-Tres

Wendell Bell  
Director-Labor Relations  
BNSF Railway Co.  
P. O. Box 961030  
Fort Worth, TX 76161-0030

August 4, 2004  
Re: Imp 17A Implementation  
Sent via Email / USPS

Dear Wendell,

This letter is with regard to Implementing Agreement 17A which was recently arbitrated and subsequently signed and dated June 11, 2004. On July 21, 2004 I forwarded you an email which read:

Wendell,  
I am in receipt of a signed copy of Imp 17A dated 06.11.04. When do you anticipate on implementing it? The Carrier approached this office over a year ago in a rush to get relief in manning particular trains and on-line work. We were there at every turn trying to cooperate and get what we felt was deserved. It has now been 40 days since the award was signed and yet the allocation in the pools has not changed and the TSP on trains has not changed. The side letter on demoted engineers bidding on assignments which was to help the ATSF requests still lies dormant until you pull the trigger. We are requesting you implement this language immediately and avoid any further delay. We should not be held hostage to what BNSF and utu do with regard to this issue. We are not married to the trainmen in the cab and should get what is due us immediately. Please advise as to your intentions.

Sincerely,  
Rick Gibbons

As of this date, we have not received a response nor acknowledgement of our request to proceed with implementation. Obviously, we do not understand the delay. Once again, please advise as to your intentions or better yet, do the right thing and allow crews under the jurisdiction of this office to reap the benefits of the aforementioned award. We are in hopes that we are not being held hostage to your discussions with the other organization in this matter or the ATSF Committee in their efforts to prevent our crews from manning the appropriate trains. This has gone on way too long.

Sincerely,

R.C. Gibbons  
BLET General Chairman

Cc: Steve Speagle - BLET Vice President  
Pat Williams - BLET / BNSF General Chairman

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5 18 04 07:43

Aug-12-04 01:11pm From-BNSF Labor Relations

**BNSF**



**WENDELL BELL**  
General Director  
Labor Relations

8173527605

T-188 P.001/001 F-524

The Burlington Northern  
and Santa Fe Railway Company

P.O. Box 961030  
Ft. Worth, TX 76161-0030  
2600 Los Mesas Dr., OOB-GIL  
Ft. Worth, TX 76131-2830  
Phone 817.352.1028  
Mobile 817.339.8429  
Fax 817.352.7482  
E-mail [wendell.bell@bnsf.com](mailto:wendell.bell@bnsf.com)

August 12, 2004

Mr. Rick Gibbons, GC  
BLET

Mr. Pat Williams, GC  
BLET

Gentlemen:

Under Article 4, Section 3 of BNSF Merger Implementing Agreement 17A as imposed by the Arbitration Committee's Award, this is the 5-day notice to put Article 3 and the side letters into effect.

Sincerely,

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# Brotherhood of Locomotive Engineers and Trainmen

## General Committee of Adjustments

Burlington Northern and Santa Fe Railway Company  
Missouri and Northern Arkansas Railroad  
5040 South Harmony  
Rogersville, MO 65742

R.C. Gibbons  
General Chairman

R.J. Dumey  
First Vice Chairman

T.L. Stipp  
General Sec-Tres

Wendell Bell  
General Director-Labor Relations  
BNSF Railway Co.  
PO Box 961030  
Ft. Worth, TX 76161-0030

September 1, 2004  
Re: Imp 17A - Partial Implementation  
Sent via Email and USPS

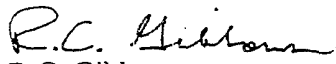
Dear Wendell,

I am in receipt of your letter dated August 12, 2004 with regard to Implementing Agreement 17A and more specifically your "5-day notice to put Article 3 and the side letter into effect."

As we have previously discussed and corresponded on this matter, we feel the Carrier does not have the right nor the authority to parcel out portions of this Award imposed by the Arbitration Committee. Furthermore, to be selective in these matters and impose a portion of any award is a total breach of the mediation process. We do not feel you can support your actions through the Railway Labor Act and request that you revise your position to include the entire award and attached agreement. Your actions are preventing the fulfillment of said award and ultimately denying our members the work they deserve. By virtue of this letter we are requesting those effected under jurisdiction of this office to file claim against the Carrier for those trains manned and handled incorrectly.

We understand your hesitancy in this matter due to the Operating Supervisors wants and wishes, but feel that has absolutely no consequence involving the ruling of this third party. We ask that you immediately rectify the problem and contact all those involved in the matter as to this implementation.

Sincerely,

  
R.C. Gibbons  
BLET General Chairman

Cc: Steve Speagle, BLET VP Assigned  
Pat Williams, BLET General Chairman

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**Bell, Wendell A**

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**From:** Bell, Wendell A  
**Sent:** Wednesday, November 10, 2004 10:31 AM  
**To:** 'Pat Williams'; Bell, Wendell A  
**Cc:** rick gibbons; Steve Speagle; A Jim Hagar  
**Subject:** RE: Rosters/Force assignments



Pat:

As you know, my original idea was to leave the agreement on the shelf, by not serving the notice to make it effective unless and until I had a corresponding UTU agreement in hand. And, after making sure with operations that different crew change points for conductors and engineers was every bit as unfeasible as I thought, I resisted BLE's efforts to get me to put it into effect.

Eventually, Rick and Steve convinced me that we could go forward with the allocations, while leaving the operational implementation until the UTU 17A was reached. I did that, and it now looks like no good deed goes unpunished.

Well, no I am not going to, on my own and against the explicit advice of my clients in Operations, create four different crew change points (Black Bear and Oklahoma City and Gainesville and Ft. Worth) on two crew districts. I'm not that eager to get fired. And no I am not going to rescind the decision to put the allocations (which don't directly affect train operations) into effect.

What Hagar is complaining about--and with some justification--is that there are some gray areas, particularly with force assignments on/from/to the allocations. I am certainly willing to meet to resolve those sorts of issues.

Wendell

-----Original Message-----

**From:** Pat Williams [mailto:pjwilliams@sbcglobal.net]  
**Sent:** Wednesday, November 10, 2004 8:54 AM  
**To:** Wendell A. Bell (E-mail)  
**Cc:** rick gibbons; Steve Speagle; A Jim Hagar  
**Subject:** Fw: Rosters/Force assignments

Wendell:

It has been long enough. Either get all of Imp 17a put into effect or take it all out. This crap of having just part of it implemented is not working as you are well aware.

Pat

-----Original Message-----

**From:** Jim Hagar <mailto:bnsfengr@cox.net>  
**Date:** 11/07/04 12:51:17  
**To:** Pat Williams ATSF G.C. <mailto:pjwilliams@sbcglobal.net>  
**Cc:** John Atchison 777 <mailto:jpb1e777@aol.com>; Mike Lane 141 <mailto:lanes2@sbcglobal.net>; Jim Hagar 462 <mailto:bnsfengr@cox.net>  
**Subject:** Rosters/Force assignments

Pat,

*Crew Management continues to try to force assign the senior engineer working on the ground at Ark City to Enid. Telling him that he is the senior engineer working in demoted status.*

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BNSF IMPLEMENTING AGREEMENT 11

between

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY CO.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

1. The purpose of this agreement is to provide for expedited changes in services, facilities, operations, seniority districts and existing collective bargaining agreements to effectuate the common control approved by the I. C. C. in Finance Docket No. 32549. The purpose is also to enable the company to be created by consummation of the merger proposed in that Finance Docket to be immediately operated in the most efficient manner as one completely integrated railroad.

2. This is an interim arrangement, designed particularly to allow unit grain train operations through the new corridor created by this merger. As rehabilitation projects and other construction allow different and improved operations, this Agreement will be revisited and, as necessary, renegotiated to continue to fulfill its purpose as the operational setting changes.

IT IS AGREED:

Article 1 - Operational Changes in the Superior Gateway

Section 1.

A. Operations, utilizing a single engineer, will be established between Lincoln and Superior (with Lincoln as the home terminal); McCook and Superior (with McCook as the home terminal). See Attachment A.

B. Operations, utilizing a single engineer, will be established between Newton and Superior via Peabody (lost Springs) or via Neva (with Newton as the home terminal). See Attachment B.

C. A Hastings - based road switcher will be established which will work in the territory from Hastings, through Red Cloud and Superior. See Attachment C.

D. A McCook - based local will be established which will work in the territory from McCook, through Oxford Junction, Orleans and Superior. See Attachment D.

E. The present terminal and switching limits of the Burlington Northern and Santa Fe at Superior will be consolidated. See Attachment E.

#### Article 2 - Protection

##### Section 1.

A. The incumbent Engineers on the Santa Fe's Superior Local and the BN's Hastings and Wymore Locals as of Dec. 14 1996, 1997 are automatically certified as eligible for displacement and dismissal allowances under Sections 5 and 6 of the New York Dock Conditions.

B. Also, in this single, isolated instance, and on an otherwise non-referable basis, the carrier has acceded to the Organization's request to automatically certify the     ( )     Engineers assigned to the Wymore extra board as eligible for displacement and dismissal allowances under Sections 5 and 6 of the New York Dock Conditions.

##### Section 2

A. It is not contemplated that pools will be established until there is a reasonable assurance or expectation that employees working in the particular corridor are or will consistently make the money equivalent of 4000 miles.

B. The matter of guarantees to the pools and locals established by this agreement is addressed in the respective agreements.

C. The pools, if once established, may thereafter be suspended if they are not being consistently utilized. "Consistently utilized" means that if, during the first two years of operation of a pool, over 4 consecutive semi-monthly pay periods, the pay miles earned by

the last engineer in this particular pool is less than 1300 per semi-monthly pay period. If all pools established under this agreement are abolished by operation of this provision, then the Agreement itself is suspended, and will be revisited by the parties prior to the reactivation of any operations under it.

### Section 3

If Wyrmore prior rights allocations are made in the Lincoln - Superior pool, an equal number of BNSF Moving Benefit Packages will be open to employees with such prior rights who make a bona fide change in residence.

## Article 3 - General

### Section 1

The parties have negotiated this Agreement mindful of the fact that their futures are linked and that we must work together to succeed over the long term. Therefore, the parties mutually pledge and commit themselves to act reasonably in the application of this agreement. The parties also pledge to reopen these discussions and revisit the terms of this Agreement, or, as necessary, modify it in order to meet operational needs as the physical structure and marketing and operating situations change.

### Section 2

A. All pre-existing agreements that conflict with the terms of this agreement are superseded to the extent of the conflict.

B. This implementing agreement is made pursuant to the New York Dock Conditions which, by this reference, are incorporated here.

C. Nothing in this implementing agreement shall be interpreted to expand or contract protective benefits provided in the New York Dock Conditions imposed by the Surface Transportation Board.

### Section 3

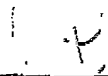
This agreement will become effective upon notice from the carrier, but not less than 10 days nor more than 1 year after it is executed by the parties, and may later be changed by mutual agreement or in accord with applicable law.

Signed and accepted at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 1997

for BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS

  
\_\_\_\_\_  
General Chairman

for THE BURLINGTON NORTHERN  
AND SANTA FE RAILWAY CO.

  
\_\_\_\_\_  
Director - Labor Relations

\_\_\_\_\_  
General Chairman

  
\_\_\_\_\_  
Assistant Vice President, Labor Relations

## Attachment B

In order to create opportunities to secure additional business in the Superior, Newton, Wichita, Wellington, and Arkansas City corridor, the parties agree to the following:

### Service in the Newton/Superior Corridor

1. A pool for engineers may be established at Newton, Kansas, to protect unassigned service between Superior and Newton under the conditions of Article 2, Section 2, of the agreement. This pool will be referred to as the Superior Pool. Newton will be the home terminal for these crews, and Superior will be the away-from-home terminal. Crews in the Superior Pool will only be used to protect terminal-to-terminal service and will not be used in turnaround service or any other service except as provided herein. Courtland turns will be handled by the extra board, and when an extra board engineer is used for a Courtland turn, the extra board engineer will be paid the same as the engineer would have been paid prior to the date of this agreement.
2. Engineers who hold positions in the Superior Pool will be compensated no less than the rate of pay for the engineers' guarantee extra board at any time the Superior Pool holds six (6) turns or less at any point during any one pay period for two years from the date the Superior Pool is established. At the expiration of two years from the establishment of the Superior Pool, the guarantee will be permanently eliminated. During this two-year period, the number of crews in this pool will be regulated so as to provide mileage within the range of 3900 to 4350 paid trip miles. The guarantee will be prorated or reduced on the basis of 1/13, 1/14, 1/15, or 1/16 (depending on the number of days in the payroll period) for each 24-hour period or portion thereof when an engineer lays off or is otherwise unavailable for service.
3. Engineers from the Superior Pool may be called to work or to be deadheaded from Newton to Superior, and when so called, Superior Pool crews can be tied up for rest at Superior if necessary.
4. When an engineer assigned to the Superior Pool stands to deadhead but has already deadheaded at least once during the same pay period, the engineer will run-around on the board without penalty to the Carrier. The next-out engineer in the Superior Pool who has not deadheaded during that pay period will be used to deadhead.

If rested engineers at the location (home terminal or away-from-home terminal) have deadheaded once or more during the pay period, engineers will be called in the usual and customary manner under existing agreements (first-in, first-out).

Engineers in the Superior Pool who are run-around at the home terminal or the away-from-home terminal because of the application to this provision, may request to regain their turn at the opposing terminal if they properly notify Crew Management on arrival at the opposing terminal.

Attachment B

5. When called on duty at Superior, a Superior Pool crew will be called to work to Newton via Lost Springs, Neva and Peabody (over the Santa Fe) or via Lost Springs and Peabody (over the Union Pacific). Mileage for pay purposes will be:

| <u>Route</u>   | <u>Miles for Pay Purposes</u> |
|--|-------------------------------|
| Superior-Lost Springs-Neva-Peabody-Newton (via Santa Fe) | 205 miles                     |
| Superior-Lost Springs-Peabody-Newton (via UP)            | 177 miles                     |

Until such time as the wye is constructed at Neva, engineers operating via the Santa Fe route will be paid the actual miles of that route which the drafters of this agreement believe to be approximately 221 miles.

6. An engineer working in this Superior Pool will not be required to exchange trains with an engineer working in the Kansas City/Newton or Kansas City/Wellington freight pool.
7. A pool freight engineer called for and departing the terminal in this service will be allowed the mileage as set forth in this Agreement, except when the service is interrupted by an emergency such as flood, washout or derailment, and the pool freight crew is returned to the originating terminal. In that event, the crew will be paid actual miles run with a minimum of a basic day and the crew will be placed first-out over all others on the board after eight hours rest. It is understood that the foregoing does not modify the current call and release rule.
8. For purposes of this agreement, Concordia will be eliminated as a terminal. However, when a Superior Pool engineer (Pre- and Post-1985 engineers) operates through Concordia, each member of the crew will be paid an allowance separate and apart from all other earnings at the basic daily rate of pay. During 1998 and 1999, the payment will be thirty (30) miles at the basic daily rate of pay; however, each subsequent calendar year, the mileage payment will be reduced by two (2) miles until the allowance is eliminated in its entirety.
9. Engineers in this service who are held at their away-from-home terminal will be paid continuous time for all time held after the expiration of 16 hours from the time relieved from previous duty, at the rate paid for last service, until called for service or ordered to deadhead, in which case held time shall cease at the time pay begins for such service, or when deadheading, at the time the train departs on its road trip. If transportation other than train transportation is used for deadheading, held time shall cease at the time of departure of the other mode of transportation.



Attachment B

10. Engineers deadheading from Newton to Superior or Superior to Newton with a seniority date prior October 31, 1985, will be compensated by allowance of a basic day or actual time whichever is greater.

Engineers deadheading from Newton to Superior or Superior to Newton who established seniority after October 31, 1985, will be compensated by payment of actual time spent deadheading with a minimum payment of five hours.

11. In order to expedite the movement of trains operating between Superior and Newton, the Carrier shall determine the conditions under which such crew may stop to eat. When an engineer, working or deadheading, is not permitted to stop to eat, he will be paid an allowance of \$1.50 for the trip, unless the crew is on duty in excess of eight hours, in which event \$6 will be allowed in lieu of the \$1.50.

12. Hours of Service Law relief will be provided as follows:

- The Newton Extra Board will be used for HOSL relief for trains operating from Superior to Newton.
- Superior Pool engineers at Newton or Superior may be used for HOSL relief for trains operating from Newton to Superior. If the Carrier elects to use a Superior Pool engineer at Superior to provide HOSL relief for a train operating from Newton to Superior, the engineer will only be used to provide HOSL relief one time, after which he will be placed first-out at Superior when rested.

When a Superior Pool crew is tied up under the Hours of Service Law and is to be transported to the distant terminal to complete the trip, the following provisions will govern:

- a. One hour will be free time.
  - b. Straight time allowance will be paid for any time in excess of free time calculated from the time tied up under the Hours of Service Law until transportation becomes available.
13. Engineers in the Superior Pool will be permitted to advance the starting date of their scheduled vacation period to coincide with the start of layover days.
14. When an engineer in the Superior Pool is called and released, after time of going on duty, but before the road trip commences, such crew will be paid as provided in the Agreement (as confirmed by awards and practices), and stand first-out.

Attachment B

When a crew is called and released before going on duty, they will be paid as provided for in the Agreement (as confirmed by awards and practices) and maintain their standing on the board.

15. Engineers in this service will not be required to trade trains in opposite directions.
16. Applicable schedule rules will apply to pool freight crews required by the Carrier to attend formal investigations; however, a crew or member thereof in this service who is ordered by the Carrier to appear for a formal investigation at a location other than their home terminal will be compensated for deadhead in accordance with existing agreement when dismissed or suspended.

To the extent possible, formal investigations will be held at the home terminal of the employees involved.

Service Between Newton and Arkansas City/Wellington

17. Service between Newton and Arkansas City and between Newton and Wellington will continue to be handled as it was prior to the date of this agreement by the Newton extra board.

Other Considerations

18. If any aspect of this agreement is determined to be contrary to the goal of creating the opportunity to secure additional business, the parties agree to meet and amend the agreement as necessary.

Agreed this \_\_\_\_\_ day of \_\_\_\_\_ 1993.

For: Brotherhood of Locomotive  
Engineers

For: Burlington Northern and  
Santa Fe Railway Company

\_\_\_\_\_  
John D. Mullen  
General Chairman

\_\_\_\_\_  
Wendell A. Bell  
General Director - Labor Relations

\_\_\_\_\_  
Milton H. Siegel, Jr.  
AVP - Labor Relations

Attachment E

**SUPERIOR YARD CONSOLIDATION**

- A. The present terminal and switching limits of the Burlington Northern and Santa Fe at Superior will be consolidated. The new switching limits for the consolidated yard at Superior are:

|                        |           |
|------------------------|-----------|
| East (BN track)        | MP 166.19 |
| West (BN track)        | MP 175.53 |
| South (Santa Fe track) | MP 150.00 |

- B. Engineers may be required to perform the same work throughout this consolidated terminal, including delivery and receiving of cars or trains from interchange carriers, as they may perform, under applicable collective bargaining agreements, in their present separate terminals.
- C. In the event that a need for yard service at Superior is found to be developing, the parties will revisit this Agreement, establishing parameters for yard service in this consolidated terminal like those established at Kansas City in BNSF Implementing Agreement 4, dated March 1, 1996.